

Award No. 13675
Docket No. CL-15089

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

LOS ANGELES UNION PASSENGER TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5608) that:

(a) The Los Angeles Union Passenger Terminal violated the Agreement between the parties when on December 23, 1963, at Los Angeles, California, it dismissed Mr. Edwin J. Hornsten from service notwithstanding failure to meet investigation procedural requirements and based on charges not proved; and,

(b) The Los Angeles Union Passenger Terminal shall now be required to restore Mr. Edwin J. Hornsten to service with seniority and all other rights unimpaired and to compensate him for all wage loss from December 10, 1963, the date he was suspended from service, to the date he is restored to service with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant, a Janitor Foreman, was dismissed, after hearing had been held in the matter, for violating Rule G which stipulates that:

"The use of intoxicants or narcotics by employes available for duty, or their possession or use while on duty, is prohibited and cause for dismissal."

Claimant admitted drinking 2½ ounces of wine several hours before reporting to work. That fact, considered in the light of the first portion of Rule G and coupled with the testimony of Carrier's Special Officers, Investigator and Assistant Stationmaster, is sufficient to support Carrier's findings of the violation.

Petitioner points to Rule 41, which prescribes that an accused employe must be given prior written notice of the precise charges against him, and insists that Claimant never received such written notice. That argument loses a good deal of its force because of Claimant's direct admission and can not therefore, serve as adequate basis for setting aside Carrier's findings.

On the other hand, we are not disposed to sustain such extreme discipline

as dismissal when the supporting record betrays a major defect. Claimant maintains that he did not receive written notice and we are inclined to credit his statement in that regard since his testimony, including several admissions against interest, seems forthright and honest. Oral notice can lead to questions of clarity and content and is certainly not to be equated to the written notification required by Rule 41. Petitioner did not waive the defect since his duly designated representative made timely objection and continued with the hearing subject to that objection.

In our opinion, the notice defect is serious enough to warrant a review of Claimant's dismissal, notwithstanding his past record of service. A lengthy suspension without pay is sufficient discipline under the circumstances of the present case and we will direct that Claimant be restored immediately to his former position with all rights unimpaired except that he shall receive no back pay or compensation for the period of his suspension.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained to the extent specified in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1965.