

Award No. 14350

Docket No. DC-15825

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 354

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 354 on the property of the Louisville & Nashville Railroad Company, for and on behalf of Waiter-in-Charge Charles Stewart, that he be restored to service, with seniority and vacation rights unimpaired, and compensated for net wage loss, account of Carrier dismissing claimant from service on July 2, 1965, in abuse of its discretion and in violation of the agreement.

OPINION OF BOARD: Charles H. Stewart, a waiter-in-charge, with seniority from March 3, 1942, was party to an investigation on June 28, 1965 on charges that on June 19, 1965, he was "under the influence of intoxicants and creating disorder at Union Station, Nashville, Tennessee, between arrival train No. 6 and departure train No. 5."

The Organization claims that the Claimant had not been drinking as charged, and that even if he had been drinking, the evidence is that he was not on duty at the time involved. Accordingly, it concludes that the Claimant should be reinstated with full back pay for earnings lost.

The Carrier alleges that the Claimant was given a fair and impartial investigation, that there was clear evidence of his being under the influence of alcohol, and that in view of his prior record, and the seriousness of this offense the discipline imposed was not unreasonable and should not be disturbed by this Board.

There is substantial evidence to support the charge that the Claimant was in violation of the Carrier's rule prohibiting "the use of intoxicants, or indulgence in alcoholic beverages before reporting for duty, * * * or on the company's premises * * *," even though he was not actually on duty at the time. For this violation of the Carrier's rule, a penalty is in order.

Nonetheless, it must be borne in mind that this Claimant had been in the Carrier's service for twenty-five years prior to his dismissal. During that time there is no evidence of his having been subjected to discipline for violation of the rule under consideration. Accordingly, we find that he shall be reinstated with full seniority and vacation rights, but without back pay.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The discipline imposed was excessive.

A W A R D

The Claimant shall be reinstated with full seniority and vacation rights but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.