

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5999) that:

(a) The Carrier violated the Agreement when it dismissed George Bennett Garrison from service.

(b) Claimant Garrison shall now be restored to service with seniority and all other rights unimpaired and paid for all losses sustained by reason of his wrongful dismissal.

OPINION OF BOARD: Claimant in this case was charged by the Carrier with having absented himself, without permission, from the office (Tax Department) on May 4, 1965, as shown by the following record:

Time Left	Time Returned
8:37 AM	9:05 AM
10:20 AM	10:40 AM
10:48 AM	11:19 AM
2:43 PM	Claimant had permission to visit his physician.

Claimant was also charged with "using intoxicants during your regular assigned tour of duty on that date."

The Claimant has been employed by the Carrier since July 23, 1929. His service record was clear. At the time the incident leading to this claim occurred, he was Carrier's Senior Tax Investigator.

Claimant did not testify in his own behalf; nor did he, nor did the Organization present any witnesses in his behalf.

His first absence was to go to the bank. This consumed 28 minutes.

The second absence was to get a cup of hot chocolate.

The third trip was to the State Liquor Store, where he purchased a bottle of vodka. He walked from the liquor store to a public parking lot where he took a drink of the vodka. He left the bottle behind an automobile. Carrier's investigators had followed him that morning, and witnessed the purchase and taking of a drink from the vodka bottle.

The fourth trip, for which he had permission to leave, was for the purpose of going to a physician. He told of having had severe pain during the prior night.

An investigation was held, and the facts as here outlined were admitted.

This Board has consistently ruled that we should not substitute our judgment for that of the Carrier in matters of this kind unless there is clear evidence that in the exercise of its right to discipline the Carrier acted in an arbitrary or capricious manner.

We find no violation of Rule 27; nor have we the authority to overturn Carrier's action on a basis of leniency. Leniency is a prerogative of management. Awards 9775, 11914, 12104, 13116, 14800.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1967.