



Award No. 15574
Docket No. CL-16404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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-6052) that:

(a) The Carrier's action in dismissing W. E. Brown from its service on March 8, 1965 was unreasonable, unwarranted, arbitrary and capricious, and in violation of the Agreement.

(b) The Carrier shall now be ordered to restore W. E. Brown to service with all rights unimpaired and compensate him for all losses sustained because of his wrongful dismissal.

OPINION OF BOARD: Claimant, a regularly assigned janitor, was dismissed from Carrier's service for being under the influence of intoxicants while on duty at about 3:15 P.M., Sunday, February 28, 1965, at Russell, Kentucky.

Charges were preferred against Claimant on March 1, 1965 and an investigation was held at 9:30 A.M. on Thursday, March 4, 1965. Both Claimant and his duly authorized representative appeared and participated in the investigation. The transcript of the investigation reflects that Claimant admitted he was properly notified of the charges against him. Moreover, in response to a specific question Claimant stated that he did not desire witnesses and was ready to proceed with the investigation. Thereafter, Claimant was notified on March 8, 1965 of his dismissal from service of Carrier.

The instant claim was duly filed and processed on the property and is properly before us for determination. The gravamen of Petitioner's position is that Claimant was denied a fair and impartial hearing because the investigation was scheduled shortly after the charges had been filed against Claimant for 9:30 A.M., a time which Petitioner contends was most inconvenient for Claimant to secure the presence of necessary witnesses. Hence, Petitioner requests that this Board consider statements from fellow employees and others who were in contact with Claimant on February 28, 1965 concerning his demeanor on that date.

Carrier contends that such statements from employees and others may not properly be considered in determining the issue presented at the hearing.

We agree that such statements, which were submitted after the conclusion of the investigation, are inadmissible. Award 9102. As to the timeliness of the investigation and Claimant's difficulty in being able to produce witnesses, we find no evidence in the record of any request by Claimant or his representative that any witnesses, other than those present at the investigation, be called or made available to participate in the proceeding. Consequently, we must conclude that Claimant and his representative waived any such procedural objections to the manner in which the investigation was conducted during the hearing on March 4, 1965.

Testimony of four Carrier witnesses given at the investigation on March 4, 1965, was to the effect that Claimant's speech was incoherent, that he had an odor of alcohol on his breath, and that he appeared to be in an intoxicated condition. Claimant denied drinking on duty, but conceded that he had attended a social affair the previous evening at which he had consumed some gin. He stated that he had taken some tablets for a headache, which allegedly were responsible for his condition.

Although no medical tests were made to determine whether Claimant was actually intoxicated, laymen are competent to make such a determination. Awards 10928, 8993, and others. Here, all four Carrier witnesses agreed as to the condition of Claimant, and such evidence is of probative significance.

Petitioner urges that the ultimate penalty of dismissal was unreasonable, unwarranted, arbitrary and capricious, and that a lesser penalty is indicated from the record. We have noted Claimant's apparently unblemished record prior to the instant dispute as well as Carrier's suggested form of discipline for first offenders, submitted to Petitioner's General Chairman among others on August 26, 1958. However, the record reveals that Carrier's findings are based upon substantial and credible evidence; that Carrier's conduct of the investigation was neither vindictive or prejudicial; and that none of Claimant's procedural or substantive rights was abrogated. Therefore, we find no valid basis here for substituting our judgment for the disciplinary action taken by Carrier and the claim must be denied. Awards 12438, 12738, 13127, 13117, 13674, and others.

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 19th day of May 1967.

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