

Award No. 16015

Docket No. DC-16867

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John J. McGovern, Referee

PARTIES TO DISPUTE:**JOINT COUNCIL DINING CAR EMPLOYEES
(Local 465)****UNION PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 465, on the property of the Union Pacific Railroad Company, for and on behalf of Lounge Car Attendant, Lee E. Patterson, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since July 25, 1966, account of Carrier dismissing claimant from service on that date, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: This is a disciplinary case involving the dismissal from service of the Claimant. The evidence of record indicates that while on duty as a Lounge Car Attendant, the bar service area of the car was in complete disarray and was unattended. Claimant was found asleep in the dormitory section of the car at a time when he should have been actively performing his duties. He was awakened by his superior, was insubordinate, refused to turn over the keys of the car when requested to do so, and while forcibly being removed from the car, struck a Company officer. He was subsequently arrested, placed in jail, and charged with being drunk as well as with battery. He was acquitted of the charge of being drunk and found guilty of the battery.

An investigation was held and decision rendered that he be dismissed from the service. A review of the investigation and the evidence adduced therefrom indicates that the Claimant either was under the influence of intoxicants, which Carrier contends, or was suffering from a diabetic seizure, which Claimant offers as a defense and explanation for his behavior. The essential facts of this case are not in dispute, the only controversy being whether his behavior is attributable to alcohol or the diabetes, from which he admittedly suffers. During the course of the investigation, he readily admitted that he had imbibed 4 beers before going on duty and, indeed, a bottle of vodka partially consumed was found in his personal possession when he was checked into the police station. The bulk of the evidence supporting the contention that he was simply intoxicated is, to be sure, most persuasive. There is, nevertheless, an element of doubt and a possibility that the principal cause of Claimant's condition was due to the diabetic seizure, aided somewhat by the drinking of four beers. This was, of course, a purely voluntary act of the Claimant, that is, the beer drinking. No one can say for certain whether or not he drank any of the vodka on the day in question.

His acquittal of the drunk charge in Civil Court is convincing; he does suffer from diabetes and has a diabetic identification card on his person at all times. This apparently was given considerable weight by the Court. He was found guilty, nevertheless, of the battery charge.

From a consideration of all factors in this case, and in recognition of the Claimant's long protracted years of service in the employ of the Carrier, during which, so far as this record is concerned, it appears to be devoid of similar occurrences, it is our judgment that the final decision, dismissal from the service, was too severe and harsh. We by no means wish to convey the impression that we view this case lightly, because the opposite is true. We consider the charge as the most serious of offenses, but because of mitigating and extenuating circumstances, and in recognition of his long years of service, unblemished so far as this record is concerned, we order him to be reinstated, with no loss of seniority, but with no compensation from the date of his dismissal.

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 violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1967.