

Award No. 16342
Docket No. CL-17202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**NORFOLK AND WESTERN RAILWAY COMPANY
(Western Region)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6331) that:

(1) Carrier violated the current Clerks' Agreement when it arbitrarily and improperly dismissed Yard Clerk H. G. Scherer on October 6, 1966, without just cause and denied him a fair and impartial hearing as provided for under the Rules of the Agreement.

(2) Yard Clerk H. G. Scherer be restored to service with seniority and all other rights unimpaired.

(3) H. G. Scherer shall now be reimbursed for all wage loss sustained as a consequence of Carrier's action.

OPINION OF BOARD: The Claimant herein was dismissed from the Carrier's service on October 6, 1966, for reporting late for work and in an intoxicated condition on September 27, 1966. The claim seeks restoration of Claimant to service as yard clerk with seniority and other rights unimpaired and that he be reimbursed for all wage loss sustained as a result of his dismissal.

In its submission to this Board the Petitioner contends that Claimant's procedural rights were prejudiced in the manner in which the investigation was conducted and the appeal was handled on the property. We find no valid basis for such contention. As such contention was not made in the handling of the dispute on the property, it cannot be made for the first time before this Board, and we will not consider it.

As to the merits of the dispute, it is clear from the record that Claimant did report late for work on the date involved. The record is also clear, however, that, realizing that he would be late, he telephoned the office and reported that he would be late. When he did report, about 40 minutes after his assigned starting time of 7:00 A. M., he was informed by the Chief Clerk

that he would not be allowed to work and that other arrangements had been made to fill the position that day. In the investigation the Chief Clerk and the Assistant Trainmaster testified that in their opinion the Claimant was intoxicated. The Claimant admitted that he drank some beer the night before.

The Board finds no proper basis for the contention that the charges against the Claimant were not sustained.

However, based on the entire record, and considering all the circumstances in the case, the Board considers permanent dismissal from the service to be excessive, and concludes Claimant should be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

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 discipline imposed was excessive.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.