



Award Number 17600

Docket Number CL-18287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6607) that:

- (a) The Carrier violated terms of the Clerks' Agreement when it dismissed Clerk W. C. Johnson from the Carrier's service;
- (b) That W. C. Johnson shall be restored to the Carrier's service with all rights unimpaired and compensated for all time lost while held out of service;
- (c) That for each month W. C. Johnson is held out service, the Carrier shall also make premium payments on behalf of Claimant in the appropriate amounts to the Employees' Hospital Association and the Travelers Insurance Company for his health and welfare benefits and coverage.

OPINION OF BOARD: Following an investigation Claimant was dismissed from Carrier's service December 29, 1967 for being under the influence of intoxicants during his tour of duty beginning at 4 P.M. December 13, 1967.

The contention has been raised that Claimant was not given a fair and impartial hearing inasmuch as the same officer of the Carrier signed the charges against Claimant and served as a member of the Board of Inquiry, however the failure of Claimant to object to such service at the time of the investigation constitutes waiver and cannot be raised for the first time after the investigation is concluded.

As to the merits of the case, there is substantial evidence in support of the charge against Claimant, but in our opinion based on the entire record, including Claimant's length of service, permanent dismissal was excessive discipline. We will, therefore, award that Claimant be restored to the service with seniority and other rights unimpaired, but without pay for the time lost while out of service. Part C of the Claim is denied.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.