Award Number 17970
Docket Number CL-18534

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6673) that:

1. The Carrier violated the rule of the Agreement extant between the parties when it withheld Mr. Tom Dowd from service and subsequently dismissed him on November 26, 1968, following investigation held on November 18, 1968.

2. (a) Mr. Tom Dowd shall be restored to the service of the Carrier and (b) compensation for all wage loss sustained as a result thereof.

OPINION OF BOARD: Claimant, a Abstract and Code Clerk, was dismissed from Carrier's service after hearing in regard to Claimant's consumption of alcoholic beverages while under pay during working hours on the afternoon of November 11, 1968, and also for his carelessness, negligence and indifference in the performance of the work assigned his position.

It is undisputed that Claimant was in Tommy's Bar during his coffee break on November 11, 1968 consuming a drink of intoxicating beverage. Claimant admitted to this as well as testimony of two of Carrier's officers and another witness, who stated they followed Claimant into said bar, saw him consume a glass of brandy and water, and one of them, with the permission of Claimant, tasted said beverage.

N. A. Schoeplein, Carrier's Manager-Revenue Accounting, testified that he received a letter from Carrier's Chief Clerk, J. M. Ferrol, stating that Claimant was not complying with the requirements of his position because during the month of October, 1968, out of a total of 9,002 waybills, Claimant coded 2,419 and Mrs. Guadagnini coded 4,222 during straight time pay. Chief Clerk, in said letter stated that inasmuch as Claimant did not code any government waybills, which take longer to work, Claimant should have coded a minimum of 3,600 waybills, and recommended that Claimant be removed from his position of Abstract Code Clerk. Mr. Schoeplein testified that the charges against Claimant relative to his performance of work were based on Mr. Ferrol's said letter. Mr. Schoeplein further testified that on October 18, he called Claimant into his office with Mr. G. J. Welch, Assistant Manager Revenue Accounting, and Mr. Ferrol present and advised Claimant that he was doing a poor job and that he would have to improve, Mr. Schoeplein stated that Claimant admitted to him that he was doing a poor job.

It is undisputed that Claimant did take a drink while on duty, although on his coffee break. This is seen by Claimant's own admission as well as the testimony of three witnesses of the Carrier. Further, the Organization in its ex parte submission to this Board, admitted that Claimant, by his own testimony, violated the Carrier's rule of drinking while on duty.

In regard to the second charge against Claimant of "carelessness, negligence and indifference in the performance of work", the record shows that Claimant was warned repeatedly about "drinking" while on duty and his "indifference" in the performance of his duties. Carrier pointed out to the General Chairman by letter of Carrier's Manager of Personnel, W. A. Tussey, dated February 13, 1969, that: "In fact you will recall that, on May 16, 1966 Mr. Dowd was removed from service for the same reasons as those involved in the instant case and on August 16, 1966 was reinstated on a leniency basis solely because of his length of service with this Company. Obviously, Mr. Dowd has not profited by his past experience nor from the fact that leniency has been extended in the past. * * *."

Claimant by letter dated May 18, 1966, addressed to Carrier's Mr. Schoeplein, stated in part:

> "This letter is to advise you that I accept full responsibility for consuming alcoholic beverages while under pay during working hours on the afternoon of May 13, 1966 and, also, acknowledge that for the past several years I have been careless, negligent and indifferent in the performance of the duties assigned to me on the position of Overcharge Claim Investigator."

Claimant stated in said letter to Mr. Schoeplein that in view of the understanding that he would be held out of service without pay from May 16, 1966 to August 14 inclusive, he was withdrawing his claim for pay for being suspended and further agree to waive any and all future claims to positions requiring knowledge of rates and/or divisions.

Claimant went on to state in said letter:

> "* * * It is further understood that leniency has been extended in this instance solely because of my length of service with the Company and a future failure on my part to conduct myself properly could result in more severe discipline or dismissal from the service of the Company."

Therefore, we can conclude that Claimant was "indifferent" and showed "neglect" toward his work when he produced a considerable lesser amount of coding of waybills for the month of October, 1968 as compared to his fellow employe Mrs. Guadagnini, and that he was guilty of the second charge as charged.

In view of Claimant's past record which shows a severe "drinking" problem and a resulting "indifference" to his work, and considering the fact that Claimant was reinstated on a "leniency" basis in the past after being removed from service for the same reasons as is involved herein, we therefore do not find that Carrier acted in an arbitrary or capricious manner when it dismissed Claimant from its service, and we will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 4th day of June 1970.

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