

Award No. 19180
Docket No. CL-19499

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Edgett, 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-7017):

(a) That the Carrier violated the Clerks' General Agreement, and Supplements thereto, when on February 3, 1970, Mr. Jake Rhoden was relieved from active service with the Chesapeake and Ohio Railway Company, and,

(b) That Mr. Jake Rhoden be reinstated and paid \$24.15 per day for each day he has been held out of service and until he has been reinstated.

OPINION OF BOARD: Claimant was observed on February 3, 1970 acting in an unusual manner. Carrier's supervisory employees investigated and concluded that Claimant was under the influence of alcohol. He was suspended from service and taken to his home by two special agents.

At the investigation five witnesses testified, giving their observation of Claimant's behavior. Each witness expressed an unreserved opinion that Claimant was intoxicated. Three of the witnesses were supervisory personnel and two were special agents of the Carrier. Each of them had ample opportunity to observe Claimant and were able to support their opinion with pertinent observations.

Claimant, on the date in question, asserted he was sick. At the investigation he asserted that he was taking a cough medicine containing alcohol. Carrier confirmed that he had visited the first aid facility and had been given a cold preparation by the nurse.

The Organization insists that Carrier committed an error, fatal to its case, when it did not send Claimant to the first aid station for a check up before sending him home. Its assertion amounts to insistence that medical evidence to support a finding of intoxication is essential. The Organization concludes that Carrier has not sustained its burden of proof.

This contention is not meritorious. Carrier had ample evidence with probative value on which to base its conclusion that Claimant was intoxicated. Five competent witnesses so testified. Claimant's assertion on February 3 that he was sick and his later statement that he was taking a cough medicine containing alcohol do not demonstrate that Carrier failed to properly investigate the facts or that it failed to base its conclusion on substantial evidence of record.

Two persons with knowledge of the facts were not called. Claimants' representative was present on February 3 when he was questioned and suspended. Claimant did not choose to call him as a witness at the investigation. Carrier's nurse saw Claimant on February 3 and neither Carrier or Claimant chose to call her. The Board cannot speculate on what their testimony might have been or on the tactical decision, if such it was, not to call them.

For the reasons stated the claim must be 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.