

H. G. Harper

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19357  
Docket Number CL-19648

Joseph E. Cole, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(Pacific Car Demurrage Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7072) that:

(a) The Pacific Car Demurrage Bureau violated the current Clerks' Agreement when on July 23, 1971 it dismissed Mr. V. F. Holton from service notwithstanding it failed to prove the charge for which he was brought to trial and, further, compounded its abuse of judicial power by dismissing him from service grounded on violation of a rule for which no violation was asserted either before or during the investigation, and;

(b) The Pacific Car Demurrage Bureau shall now be required to reinstate Mr. V. F. Holton with all rights unimpaired, including insurance and hospitalization; and to compensate him at the pro rata rate of his position beginning July 23, 1971 and continuing each date thereafter until he is restored to service with all rights unimpaired.

OPINION OF BOARD: 1. Claimant was charged with violation of Rule 7 "The indulgence in, or the possession of, intoxicants or narcotics by employees while on duty is sufficient cause for dismissal."

2. Claimant was advised of the charge and the Investigation Hearing was held by the Claimant thinking that the Carrier was going to attempt to establish that Claimant had indeed violated Rule 7.

3. Claimant was discharged for the violation of Rule 6, "Any conduct which may prevent employees from giving their best services to the Bureau, such as intemperance, gambling, assignment of salary, etc., will be considered cause for dismissal."

4. Rule 6 is not a lesser includible offense of Rule 7. Both have the penalty of dismissal.

5. Claimant is entitled to be prepared on the charge that he was notified of. In this case that was the violation of Rule 7.

6. Claimant is entitled to a hearing on the charge that may result in his discipline.

7. Claimant was not granted a hearing on violation of Rule 6, the charge upon which his discharge was based.

8. An employee subject to discipline is prejudiced if he does not know what Rule the Carrier is going to say he violated. The employee must know the charge, and the knowledge is inherent in the agreement providing for investigation and hearing.

FINDING: 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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.