

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19396
Docket Number CL-19652

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Norfolk and Western Railway Company
(Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7052) that:

(a) Carrier violated the Agreement between the parties when it unjustly dismissed Clerk Joseph J. Devlin from service as a result of a hearing held on November 19, 1970;

(b) Carrier shall reinstate Clerk Joseph J. Devlin to service with all rights unimpaired and reimburse him for all wages lost while held out of service as a result of this capricious and unjust action by Carrier.

OPINION OF BOARD: Carrier held a Formal Hearing to determine Claimant's responsibility, if any, for "allegedly having been observed while under the influence of intoxicants and using abusive and profane language directed to a supervisor of this company while on duty at Calumet Freight Station, Calumet Yard, at approximately 1:20 A.M., Saturday, November 14, 1970." Following the investigation, Claimant was found guilty of the charge and dismissed from service with the Carrier.

A careful review of the record fails to disclose that Claimant's procedural rights were violated. The notice sent to Claimant was sufficient to apprise him of the charges being investigated so that he could adequately prepare a defense. The charge was specific enough to enable him to do so, without being surprised at the hearing.

This Board finds that there was substantial evidence adduced at the investigation to support the charge against him. Claimant denied drinking on duty, but conceded that he had attended a birthday party earlier that evening at which he had consumed some alcohol. And the testimony of three Carrier witnesses given at the investigation was to the effect that Claimant had an odor of alcohol on his breath, that he was unable to properly perform his duties, and that he appeared to be in an intoxicated condition. There was further testimony that he used abusive and profane language on the date in question.

The Organization contends that the penalty of dismissal was unreasonable and excessive. However, the record reveals that Carrier's findings are based upon substantial evidence; that the hearing was conducted in a fair and impartial manner; and that none of Claimant's procedural or substantive rights were violated. Therefore, considering the seriousness of the charge we will not substitute our judgment for the disciplinary action taken by Carrier and 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Ed. Killen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.