

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19515
Docket Number CL-19316

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6987)
that:

(a) The Carrier violated the Agreement when effective September 15, 1970 it held Mrs. C. F. Witt out of service and when it suspended her for thirty days.

(b) The Carrier shall now compensate Mrs. Witt for each day she was held out of service or suspended during the period September 15, 1970 through October 14, 1970.

OPINION OF BOARD: On September 14, 1970, Claimant was removed from Carrier's service pending an investigation concerning her activities on the afternoon of September 14, wherein Claimant was charged with having consumed alcohol while on duty. A formal investigation was held at Jacksonville, Florida, on September 21, 1970, and as a result of this investigation, Claimant was suspended from Carrier's service for a period of 30 days extending from September 15 through close of business October 14, 1970. A review of the transcript of the investigation reveals that one Anne O. Acker, Executive Clerk to Senior Assistant Comptroller Customer and Freight Accounting, testified that shortly after lunch on September 14, 1970, she (Miss Acker) entered the second floor Ladies Rest Room, which evidently contained individual stalls, and after remaining in this stall for several minutes, Miss Acker heard the rattling of a paper bag and immediately thereafter saw Claimant leave the end stall and leave the rest room. Miss Acker immediately entered the stall that Claimant had left and found a strong aroma of an alcoholic beverage. Miss Acker investigated the paper bags on the shelf and in one of the bags found three cans of beer, one having been opened with a straw sticking out of the can; two cans were still unopened. Miss Acker reported the incident and asked a co-worker to talk with Claimant and see if he detected any aroma of alcohol. Later on that afternoon and about 3:00 o'clock P.M., Miss Acker went back in the Ladies Rest Room on the second floor and re-examined the bag at the end stall where there were still two full cans of beer and one empty can in the bag. Miss Acker stayed in the outer area of the rest room for several minutes and then proceeded to the stall where she had previously been. According to Miss Acker's testimony, the maid cleaned several lavatories and Claimant then entered the end stall. Immediately, Miss Acker heard the crumpling of a paper bag and the popping of a can top. Miss Acker then left the rest room and

walked a short distance from the door where she could see the entrance to the rest room. Miss Acker testified no one else entered the rest room and shortly thereafter, Claimant left the rest room. Miss Acker testified she immediately returned to the rest room and examined the paper bag on the shelf where she found that the second beer can had been opened and there was only one full can in the bag. Miss Acker reported this to other Carrier employees. The testimony among the employees working in the office was conflicting as to whether or not Claimant acted in an abnormal condition or that the odor of alcohol could be detected upon Claimant's breath. In any event, the investigation resulted in 30 days suspension for Claimant. The Organization contends that by holding Claimant out of service pending the investigation indicated that Claimant was prejudged and that the drinking of two cans of beer, several hours apart, does not violate moral turpitude. The Organization further contends that the witnesses on behalf of Claimant were ignored and that the results of the investigation did not support the charges. Carrier contends that the evidence was conclusive; that Claimant was properly found guilty of the charge; and that there is no basis for reversing the decision of 30 days suspension of Claimant.

The record in this dispute discloses that Carrier relied entirely upon circumstantial evidence in arriving at its decision to suspend Claimant from service for 30 days. The record disclosed that no one actually saw Claimant consume the alcohol; the evidence was conflicting and inconclusive as to whether Claimant had alcohol on her breath; and the evidence is inconclusive and conflicting as to any abnormal behavior on part of Claimant. The inconclusive, conflicting and circumstantial evidence relied upon by Carrier coupled with Claimant's absolute denial of the charge cast grave doubts upon the propriety of the decision of suspension by Carrier in this case. When relying upon circumstantial evidence, all facts and circumstances proved should not only be consistent with the guilt of accused, but consistent with each other, and inconsistent with any other reasonable hypothesis than that of guilt. In a discipline case, the burden of proof is on the Carrier. In this instance, Carrier, because of inconclusive and inconsistent evidence adduced at the investigation, failed to sustain its burden of proof of the charge lodged against Claimant, and for that reason, this claim will be sustained.

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;

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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. H. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1972.