

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20111  
Docket Number CL-20235

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks,  
( Freight Handlers, Express & Station Employees  
(  
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7352)  
that:

1. The Carrier violated the Clerks' Agreement when on December 29, 1971, it summarily dismissed A. Jenkins, Clerk, Houston, Texas, from service of the Houston Belt & Terminal Railway Company.

2. Clerk A. Jenkins shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

3. Clerk Jenkins shall now be compensated for all wage and other losses sustained account this dismissal.

OPINION OF BOARD: This is a disciplinary discharge case wherein claimant Andrew Jenkins was removed from the service of Carrier on January 7, 1972 following an investigative hearing into charges contained in a letter of December 30, 1971 reading in pertinent part as follows:

"Arrange to report to the office of the Superintendent, Houston Belt & Terminal Railway Company, 203 Union Station, Houston, Texas 1:00 p.m., Monday, January 3, 1972, when a formal investigation will be held to develop facts and place your responsibility, if any, in connection with you apparently being under the influence of an intoxicant or narcotic at or about 2:50 p.m. December 29, 1971, while you were working as a Stevedore at the Republic Warehouse.

You are being held out of service pending outcome of formal investigation.

You are entitled to representation and to bring any witness you so desire in accordance with the current agreement between the Houston Belt & Terminal Railway Company and the BRAC."

No useful purpose can be served by reiterating the evidence adduced at the investigative hearing. Suffice it to say that Claimant admitted, both at the hearing and under questioning by Supervisors on the day of the incident that he had consumed bourbon whiskey during his lunch break on December 29, 1971. Several Carrier witnesses, including claimant's immediate supervisor,

testified that from their observation he was unsteady in movement, slurred in speech, exuded the odor of alcohol and was **incapable** of performing his assigned duties.

Petitioner contends that dismissal in this case is so unreasonable and unjust as to constitute a violation of the Agreement, citing Rule 27. Upon review of the entire record, we cannot agree with this contention. The procedure was fair and impartial, the charges were supported by substantial evidence on the record including claimants admission, and the penalty assessed not so arbitrary, unreasonable or capricious as to violate the Agreement. While discharge of an employee with a long service record is a severe penalty, it cannot be said on the basis of this record to constitute abuse of discretion.

Nor are sufficient extenuating or mitigating circumstances by Carrier shown to warrant modification of the discipline assessed. Accordingly, we will not substitute our judgement for the disciplinary action taken by Carrier herein 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.