

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20112
Docket Number CL-20239

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station Employees

PARTIES TO DISPUTE: (

(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7349)
that:

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

2. Clerk O. W. Scott shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

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

OPINION OF BOARD: Claimant O. W. Scott was dismissed from the service of Carrier on January 1, 1972 by letter reading in pertinent part as follows:

"Attached is copy of transcript of formal investigation held in this office, January 3, 1972, 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 2:40 p.m. December 29, 1971 while you were working as a Stevedore in Room 100, Union Station Building, and further you had in your automobile parked in the Houston Belt & Terminal Railway Company parking lot, on the east side of the Republic Warehouse, a loaded 20 guage, pump action shotgun, Model #67 F, Serial #A 396028.

A careful review of the transcript plainly indicates that the charges were sustained, as substantiated by the testimony of the various witnesses, and by your own admission, and for this violation you are dismissed from the service of the Houston Belt & Terminal Railway Company."

Upon review, the whole record shows that Claimant received a fair and impartial hearing and that substantial evidence was adduced at the investigative hearing to support the charges against him. On the latter point, Claimant admitted at the hearing that he consumed bourbon whiskey during his lunch period

on December 29, 1971 and that he was on that date carrying a loaded shotgun in his automobile which was parked on Carrier property. Claimant also made similar admissions to Carrier's special agent and to supervisory personnel under questioning the day of the incident.

Claimant stated on the record that he was carrying the loaded shotgun for "self-protection" and that he consumed the alcohol during his lunch break in the belief that it would not affect his ability to work. Four witnesses, two supervisors of Carrier and two special agents, testified that from their direct observation of Claimant on the afternoon in question his speech and movement were impaired, he exuded a strong odor of alcohol, and he was incapable of performing his regular duties.

Petitioner urges that the penalty of dismissal in this case is so unjust and unreasonable as to constitute a violation of the Agreement. We cannot find sufficient mitigating or extenuating circumstances herein to support such a conclusion. This Division often has held that a violation of rules prohibiting consumption of alcohol during working hours may be a dismissible offense. See eg, Awards 18036 (Dolnick), 17970 (Dugan), 16340 (Devine) and 8806 (Bailer). In the instant case, Claimants' offense was compounded by the possession of a loaded firearm on Carrier property while he was under the influence of alcohol. We cannot find disciplinary discharge under these circumstances to be arbitrary, unreasonably excessive or capricious. Accordingly, we will not substitute our judgment for the disciplinary action taken herein 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:

A. W. Paulus
Executive Secretary

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