

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21389
Docket Number CL-21592

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Freight Tariff Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8133) that:

CLAIM 1.

(a) The Claimant, O. E. Turner, was dismissed from Bureau Service unjustly.

(b) The Bureau shall now be required to restore Mr. Turner to Bureau service with full seniority rights unimpaired, including vacation rights, and compensate him for all salary loss sustained retroactive to July 11, 1975 to include all subsequent increases due him by negotiations between the Brotherhood and the Bureau.

CLAIM 2.

(a) The Claimant, O. E. Turner, was dismissed from Bureau Service unjustly.

(b) The Bureau shall now be required to restore Mr. Turner to Bureau service with full seniority rights unimpaired, including vacation rights, and compensate him for all salary loss sustained retroactive to July 14, 1975 to include all subsequent increases due him by negotiations between the Brotherhood and the Bureau.

OPINION OF BOARD: Carrier, The Southern Freight Traffic Bureau, charged Claimant with (1) reporting for duty on July 2, 1975 under the influence of alcohol, and (2) being intoxicated on Bureau premises on July 14, 1975. Following a hearing held on July 16, 1975, Claimant was adjudged guilty of the foregoing charges and dismissed from service.

The Employees concede that Claimant was proven to have been under the influence of alcohol on July 2, 1975. A blood test given Claimant by Doctor McDonald verified this fact. However, they deny that he was intoxicated while on Bureau premises July 14, 1975. Rather, they maintain that Claimant's physician had increased his medication which medication accounted for his apparent state of intoxication on July 14, 1975. And even assuming, which, of course, they do not, that both charges have been proven, the Employees nonetheless submit that dismissal was harsh and excessive discipline.

A thorough review of the evidence adduced at the hearing compels this Board to conclude that both charges preferred against the Claimant have been proven by substantive evidence. Claimant admits being intoxicated on July 2, 1975 so no further analysis of the evidence is necessary relative to this date. Respecting July 14, 1975, two Bureau witnesses, Messrs. Camp and Gray, testified that they observed Claimant on July 14, 1975 and concluded therefrom that he was intoxicated. Notwithstanding the testimony of Claimant to the contrary, Carrier concluded from the testimony of witnesses Camp and Gray that Claimant was indeed intoxicated on July 14, 1975, while on Bureau premises.

This Board finds from the record before us that the charges preferred against the Claimant have been supported by substantive evidence. Carrier has thus sustained the burden imposed upon it. However, in the light of Claimant's past service record, this Board is of the opinion that his dismissal was excessive. Save for one exception, Claimant has maintained a clear discipline record since 1967 when he was first employed by the Bureau. Effective July 22, 1975, Claimant was awarded disability income pursuant to the Social Security Act. Accordingly, if he can pass the Bureau's physical, Claimant shall be allowed to return to service with the Bureau with his seniority unimpaired. He shall not be entitled to any wages lost as a result of his dismissal, however.

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

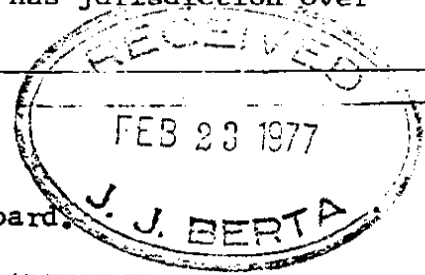
Claim disposed of per the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21389

DOCKET NO. CL-21592

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees

NAME OF CARRIER: Southern Freight Tariff Bureau

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

On January 28, 1977, this Board issued Award 21389. In that Award we held that Claimant Turner's permanent dismissal was excessive. However, we also took notice of the fact that on July 22, 1975, Claimant was awarded disability income pursuant to the Social Security Act. In the light of that, this Board directed as follows:

"Accordingly, if he can pass the Bureau's physical, Claimant shall be allowed to return to service with the Bureau with his seniority unimpaired. He shall not be entitled to any wages lost as a result of his dismissal, however."

Upon receipt of Award 21389, Carrier scheduled a physical examination. Claimant declined to take the physical examination, however, as his disability still existed. After three (3) months Claimant had still not been examined. The Carrier thus "closed" the Claimant's file, taking the position that they had complied with the Award. Carrier further claimed that since the Claimant did not avail himself of the immediate opportunity to be examined he was forever precluded from doing so. The Organization contends that Claimant should have his name restored to the seniority roster, and be held in a "disability" category until he is able to pass the physical examination.

When this Board rendered Award 21389 it was our intent that Claimant be allowed to return to service with the Carrier with his original seniority if and when he was able to pass Carrier's physical examination. We did not intend that there be a time limit in which

Claimant was required to return. This Board was of the belief that our intent was manifestly clear. Apparently it was not. This Board reiterates our earlier opinion that Claimant's dismissal was excessive, and that Claimant had the right to return to Carrier's service. Claimant's disability does not alter our findings; nor does it relate to his discipline case.

Carrier unquestionably retains the right to require Claimant to meet its physical qualifications before returning him to service. The administrative question of how Claimant's right to return to service is kept alive is not of paramount importance to this Board. Whether Claimant's right to return to service with his original seniority is to be preserved by a notation on the seniority roster; by keeping his file "open," or by any other type of notice is a matter best left to the parties to decide. However, this Board wishes to make it manifestly clear that if the Claimant ever does meet the Carrier's physical qualifications he shall then have the right to return to active service with his original seniority.

Referee O'Brien, who sat with the Division as a neutral member when Award No. 21389 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1979.