

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21501
Docket Number CL-21705

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8186, that:

(a) The Carrier violated provisions of the Clerks' General Agreement and Supplements thereto when on September 11, 1973, they arbitrarily dismissed Clerk R. E. Gamble from service and,

(b) That the Carrier now be required to reinstate Clerk R. E. Gamble to service with all rights possessed prior to dismissal being unimpaired, and,

(c) That the Carrier now be required to compensate Clerk R. E. Gamble for all wages lost while he is arbitrarily being held out of service.

OPINION OF BOARD: On August 28, 1973, Claimant was required to attend an investigation based upon a charge that he was under the influence of intoxicants while on duty.

Subsequent to a hearing, Claimant was dismissed from service.

Claimant asserts that he was scheduled to be at his work location at midnight; but the record shows that he never reached the work site because he had fallen asleep - at the YMCA - prior to reporting time. Thus, according to Claimant, under no circumstances could he be intoxicated while on duty. In any event, Claimant denies that he was intoxicated.

Claimant states that he was quite tired (and describes two days of activity without proper rest) as being the reason that Carrier Officials encountered difficulty in attempting to arouse him in the lobby of the YMCA. However, the Carrier's witnesses based their conclusions of intoxication upon an odor of alcohol on Claimant's breath, difficulty in arousing him, his inability to comprehend the circumstances and slurred speech.

A YMCA employe corroborated Claimant's testimony that he was not intoxicated.

The record is not entirely clear as to whether presence at the YMCA is tantamount to being "on duty" for this employe - however, it appears that he went to sleep prior to his reporting time.

Without immediate regard for the employee's state of sobriety, it is obvious that he placed himself into a precarious position when he failed to provide himself with adequate rest prior to his normal reporting time, and under this record, that factor alone is sufficient to justify an imposition of disciplinary action.

Although long and unblemished service, in and of itself, may not be a basis to disregard a serious offense, we note that this employee has 18½ years of service without disciplinary incident.

While a distinction between being intoxicated on duty and failure to report due to intoxication may be slight indeed, this record does raise certain questions as to the exact status at the time of the asserted incident.

Limited solely to this record, we will set aside the dismissal, and restore Claimant to service, but will not award back pay.

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 discipline imposed was excessive.

A W A R D

The claim is sustained to the extent that the dismissal is set aside. Claimant shall be restored to service with retention of seniority and other rights, but without reimbursement for compensation lost during the period of the suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.