

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21549
Docket Number CL-21786

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8265) that:

(1) Carrier's action in the dismissal from service of Mr. Eugene Hoertsch, Seniority District No. 33, St. Paul, Minnesota, effective August 1, 1975, was unreasonable, arbitrary, capricious and unjust.

(2) Mr. Eugene Hoertsch shall have his record cleared of any and all charges which may have been placed against him because of this case.

(3) Mr. Eugene Hoertsch shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.

(4) Mr. Eugene Hoertsch shall now be compensated for all wages and other losses sustained account this unwarranted dismissal.

OPINION OF BOARD: Claimant herein was dismissed by Carrier after an appropriate investigation, for absenting himself from duty without permission on July 22, 1975 and partaking of intoxicants during his working hours on that date.

The facts are not in dispute. Claimant's working hours on the day in question were from 9:00 A.M. to 6:00 P.M. On July 22, 1975, after completing his work, Claimant left the property at 5:30 P.M. and drove to a bar a mile and a half away to meet someone for personal business reasons. Upon arriving at the bar at approximately 5:45 P.M. he ordered an alcoholic drink, while waiting for his appointment to arrive. At that time his supervisor entered the bar and saw him take a drink. Further, the record indicates that Claimant did not have permission to leave early; he left his relief clerk on the premises at the time of his departure, so that the position was covered.

Petitioner argues that Claimant had testified without refutation that he and other employees had on occasion in the past left work early after completing their assignments, without comment by Carrier officials - and without permission. It is contended from this testimony that Carrier

had in the past either condoned or ignored early departure such as that herein and should not have in this instance penalized Claimant. It is asserted further that Claimant, 53 years old and with 36 years of service, had never been disciplined for infractions similar to that herein in the past. It is concluded by the Organization that the discipline imposed was wholly improper and Carrier has abused its managerial prerogative and discretion.

Carrier contends that there were no mitigating circumstances apparent in this dispute and Claimant was clearly guilty as charged by his own admission. Carrier considers Claimant's conduct blatant and a serious violation of rules and regulations governing railroad employees. Carrier argues that the penalty imposed was necessary and appropriate under the circumstances.

The record of this dispute mandates consideration of prior condonation by Carrier of conduct similar to that of Claimant herein. Although it is clear that Claimant had no right to leave work early without Carrier's permission, Carrier's sudden imposition of "capital punishment" for this half-hour infraction is certainly arbitrary and unwarranted. This is particularly apparent in the light of Claimant's long service without similar prior infractions (cf Award 13095). It would of course be improper to ignore the fact that Claimant's actions were contrary to normal working rules and must be corrected.

Under all the circumstances, therefore, and for the reasons indicated above, we shall direct that the discipline imposed be reduced to a ninety-day suspension and that Claimant be reinstated, with all rights unimpaired, and made whole for all losses sustained beyond the ninety-day period.

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 arbitrary and too severe.

Award Number 21549
Docket Number CL-21786

Page 3

A W A R D

Claim sustained in part as indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.