

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21922
Docket Number CL-22007

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Rock Island and Pacific
(Railroad Company
((William M. Gibbons, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8320, that:

1. The Agreement covering the hours of service and working conditions between the parties was violated by the Carrier, especially Rules 39, 43 and 44 at Polk Street Building, Chicago, Illinois, August 14, 1975, in the treatment accorded Clerk Arthur W. Travis in dismissing him from service, and

2. Clerk Arthur W. Travis was not guilty and was not proven guilty of alleged violation of Carrier Rules (G) and (N) of their G-147 revised, about 6:30 P.M., August 7, 1975, on the Vermont Street Station Platform in Blue Island, Illinois and

3. That Arthur W. Travis shall be restored to service with all rights unimpaired and compensated for all monetary loss sustained beginning August 8, 1975, and subsequent thereto until restored to service.

OPINION OF BOARD: After being withheld from service on August 10, 1975, Claimant was dismissed from service on August 15, 1975:

" . . . in connection with a violation of General Rule 'G' and General Rule 'N' of Form G-147 Revised concerning an incident occurring at approximately 6:30 P.M. on August 7, 1975 on the Vermont Street Station platform in Blue Island, Illinois."

Rule "G" reads as follows:

"The use of intoxicants or narcotics is prohibited. Possession of intoxicants or narcotics while on duty is prohibited.

Rule "H" reads in part:

"Courteous deportment is required of all employees in their dealings with the public, their subordinates and each other. Employees must conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of goodwill."

Claimant had previously been dismissed in 1968 and reinstated on a leniency basis in 1969 for violation of Rules "G" and "H".

The Board finds the Claimant received a fair and impartial hearing and the matter was properly processed by the Organization through the prescribed grievance and appeal procedure.

In ordinary circumstances, the finding by the Carrier of violation of Rules "G" and "H", coupled with a previous dismissal and leniency reinstatement, would offer this Board no reason to question the Carrier's dismissal of the erring employee. There is, however, little that is ordinary about this case.

There was no evidence or testimony to dispute in any way the Claimant's account of what happened before or after the incident itself: He was on duty in the morning, at which time he requested and received permission to be on vacation for the afternoon. On a doctor's prescription for treatment of a condition of "paroxysmal atrial fibrillation," he took two tablets of Valium during the course of the morning. Upon completion of duty he had lunch with a supplier for the Carrier and consumed two drinks. Thereafter, he remembers nothing until being picked up by his wife at a police station that evening.

There is also no dispute that four witnesses for the Carrier observed the Claimant at one of the Carrier's commuter passenger stations.

He was seen to urinate on the sidewalk, fall over on his back, and resist assistance or direction when approached. No witness could testify to any smell of intoxication on the Claimant, nor could any witness make a certain distinction as to whether the Claimant was intoxicated or ill. No police investigation of, or charges of, intoxication were disclosed.

There is virtually no conflict in the evidence. To determine if the Organization's claim has merit, the evidence must be reviewed against the Rules of which violation is charged.

Rule "G": "The use of intoxicants ...is prohibited..." :

Numerous previous awards have placed some generally accepted limitations on the meaning which may be inferred by the Rule within the legitimate jurisdiction of the Carrier. Awards No. 20874 (Eischen) and No. 21293 (McBrearty) are particularly in point.

In this instance, the Claimant was off duty at the time of "use" of intoxicants and was officially on vacation, not subject to duty thereafter. Following the awards referred to above, as well as numerous others, the Claimant cannot be found in violation of this portion of the Rule as normally applied.

Claimant was on the Carrier's property. No claim is made that he was using intoxicants on the Carrier's property but simply that he was found on the property. But the "property" involved was a passenger train platform, far removed from the Claimant's place of work. More important, he was there as a passenger -- not as an employee.

Was Claimant "intoxicated"? Perhaps. There is, after all, no proof that the Claimant had only two drinks, since he himself does not recall events of the afternoon. But no evidence of any kind is presented to prove intoxication (as contrasted with illness). On the contrary, his antisocial behavior and subsequent collapse do have an explanation in the combination of prescription medicine and the two admitted drinks, as stated in the note from the Claimant's physician:

"Tranquilizers may accentuate the effects of alcohol, sometimes producing extreme somnolence and possibly forgetful states."

Rule "G": "The use of ... narcotics is prohibited...":

The Board finds that the use of Valium under a doctor's prescription cannot be encompassed by the prohibition of use of "narcotics." The distinction made here is an obvious one.

Rule "H": "Employees must conduct themselves ...in such a way that their railroad will not be subject to criticism or loss of goodwill":

The action of the Claimant -- or similar action by any other person -- at one of the Carrier's public facilities presents a problem of image and decorum to the Carrier. But there is no reason to believe that any member of the public who witnessed the Claimant associated him in any way with the Carrier -- by a function he was performing, a uniform he was wearing, or by a disclosure by the Claimant himself.

All in all, the Carrier's understandable reaction was as if the Claimant was intoxicated. This was not proven. Suppose all had taken place as reported, except that -- instead of walking unsteadily and urinating in public -- the Claimant had been standing on the train platform and had suddenly collapsed with a heart attack. Would discipline have followed?

The Organization claim has merit. As to remedy, however, the Claimant does carry with him -- in addition to an exemplary work record -- the previous dismissal and leniency reinstatement for violation of Rules "G" and "H". Forethought (i.e., not taking the two drinks at lunch) would have prevented the whole sorry episode. The Board, therefore, will not grant back pay, but will direct the Claimant's restoration to service with all rights unimpaired.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.