

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22064
Docket Number CL-22163

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8400, that:

(1) Carrier unjustly dismissed from the service Mr. J. Mitchell, Reclaim Clerk, Detroit, Michigan, as a result of investigation held on May 10, 1976, in which the transcript failed to support the decision of the Carrier in sustaining the charges made against the Claimant in the caption of the investigation.

(2) Carrier shall return Mr. Mitchell to service and compensate him for all wage and other losses sustained account dismissal.

OPINION OF BOARD: In this case we have a situation in which an employee who, upon reporting for duty on April 20, 1976 following a period of absence during which he had had dental work performed, was observed by his Supervisor and the Chief Clerk to be in other than a normal condition. Upon being questioned, he acknowledged that he had recently ingested 10 milligrams of valium and he had in his possession 10 milligrams of librium. According to the Supervisor and the Chief Clerk, his speech was slurred and incoherent, his eyes were watery and glassy and he had difficulty coordinating his hand movements.

Following the conclusion of a hearing held in connection with a charge relative to "reporting to work on an 0800 Reclaim Clerk position at 0930 hours, April 20, 1976, while under the influence of alcohol and/or drugs," claimant was dismissed from Carrier's service.

Petitioner argues that Carrier did not "substantially prove that claimant was under the influence of drugs to the degree of intoxication" and that "Carrier placed an overly strict accountability

in the instant case, in lieu of the mitigating circumstances which the Carrier failed to take into consideration."

Our review of the complete record in this case reveals that there is substantial evidence in the record, including Claimant's own admissions, to show that he had consumed the drug valium and had in his possession the drug librium.

The observations of the two Carrier witnesses were clearly descriptive. There is no apparent reason to question their testimony. The charge as made has been proven. We do not find any persuasive mitigating circumstances in this record.

When we consider the serious nature of the proven charge and weigh it in the light of the previous discipline which was assessed against Claimant for a previous violation of this same operating rule, we cannot say that the dismissal in this instance was excessive, arbitrary or capricious. Therefore, the claim here 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;

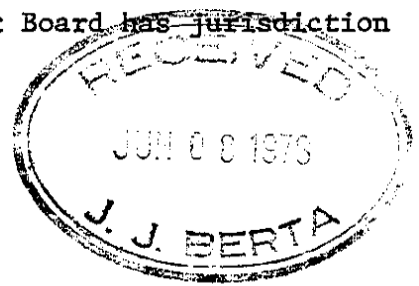
That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.