

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22457
Docket Number CL-22530

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8593) that:

(a) The Association violated the current working agreement by dismissing Mr. Joseph Sernoe at the close of business, April 1, 1977, on alleged charges of violation of company rules, which were not proven, and that the decision to have him terminated was unwarranted, unjust, arbitrary and an abuse of discretion.

(b) The Association shall clear his record of dismissal and he shall be restored to service with full seniority and all rights unimpaired, and be compensated for all wages lost.

OPINION OF BOARD: During the afternoon of March 17, 1977, claimant, employed as a junior mail clerk, appeared to other employees and to supervisory personnel to be in an abnormal condition, as a result of which he was charged on March 21, 1977:

- "(1) You were under the influence of an intoxicant, narcotic or drug while on duty and on company premises;
- "(2) Failure to protect your assignment and to perform the duties of your Position No. 136 during the afternoon of Thursday, March 17, 1977;
- "(3) Disrupting the business operation of the Department of Services and Supplies by your behavior during the afternoon of Thursday, March 17, 1977."

Investigation hearing of the charges was conducted on March 24, 1977, at which claimant was present and represented by three representatives. On April 1, 1977, claimant was notified that as there was substantial and credible evidence presented at the investigation showing that on the afternoon of March 17, 1977, he was guilty of parts (1) and (2) of the charge, in violation of Western Railroad Association rules and regulations, and in view of the substantiated charges, and claimant's less than satisfactory record during the six months that he had been employed, his services were being terminated at the close of business, April 1, 1977.

The Board has carefully reviewed the rather lengthy investigation hearing transcript and finds that the investigation was fair and impartial, and, further, that there was substantial evidence to support the charges upon which claimant was dismissed.

The contention of the Organization that claimant was suffering from Serum Hepatitis, which resulted in his abnormal actions during the afternoon of March 17, 1977, is not persuasive. Such contention appears to be based on letters received from a medical doctor and presented to the Carrier long after the investigation was closed. The Carrier points out that claimant reported for work in a normal condition on March 18, 1977, and that he participated in the investigation hearing on March 24, which lasted almost an entire day, and did not display any of the symptoms attributed to one suffering from Serum Hepatitis. Further, we do not find substantial evidence that claimant's actions on March 17, resulted from being treated for "Crohn's Disease."

The principle is well established that this Board should not substitute its judgment for that of the Carrier where it has produced substantial evidence that the offense charged was committed.

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 Employees involved in this dispute are respectively Carrier and Employees 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:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.