

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22637
Docket Number MW-22206

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employes
(Missouri Pacific Railroad Company
(Former Chicago & Eastern Illinois Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Messrs. D. L. Carter, J. L. Rutherford, R. W. Crain, R. D. Drew, L. D. McAdoo and C. R. Echols was improper, without just and sufficient cause and in violation of the Agreement (Carrier's File K 214-75).

(2) The claimants be reinstated with seniority and all other rights unimpaired and they be compensated for all wage loss suffered."

OPINION OF BOARD: Claimants were the Foreman and members of Section Gang No. 5760 working out of bunk cars near Joppa, Illinois. The gang had been warned during early April 1976 by Roadmaster Pratt that production was not sufficient and that he would be checking periodically on their progress. Thereafter Pratt assigned Foreman Redcloud to assist Foreman Carter and to keep an eye on Gang 5760. On the morning of Friday, April 23, 1976 Roadmaster Pratt and Trainmaster Everett made an unannounced inspection of the bunk cars and the Gang's work site near Karnak, Illinois. On the basis of that inspection Claimants were notified to appear for investigation into the following:

"All of you are charged with being in possession of and consuming intoxicant and/or narcotics in and about the bunk cars assigned to you at Joppa, Illinois the night of Thursday, April 22, 1976 and/or earlier morning hours of Friday, April 23, 1976. All of you are also charged with failure to commence work on time Friday, April 23, 1976.

Messrs. Drew and Rutherford are further charged with failure to report for duty the entire day of Friday, April 23, 1976.

"Mr. Crain is further charged with being under the influence of intoxicants or narcotics while on duty Thursday, April 22, 1976 and with being in no condition to perform service when found on property at Karnak, Illinois at about 8:40 A.M. Friday, April 23, 1976."

Following the investigation Claimants were judged culpable and terminated from all service.

The hearing transcript shows that Pratt and Everett arrived at the bunk cars by Hi Rail vehicle shortly before 8:00 a.m. Gang 5760 was scheduled to begin work at 7:30 a.m. As Pratt and Everett approached the bunk cars on foot, Foreman Carter appeared and shouted in words or substance, "Get out of here, Pratt is around somewhere." Several men thereupon burst through the doors, leapt into nearby vehicles and sped off. Pratt and Everett entered the bunk car where the Claimants had spent the previous night. They found in excess of twenty (20) empty beer cans on the floor, an open half bottle of vodka and two six packs of unopened cold beer. A note on the table signed by Drew and Rutherford stated that they were drunk and would see the others at Karnak. The car was in a state of filthy disarray with the garbage cans full of additional empty beer cans. Substantial evidence, including admissions, establishes that Claimants had an alcoholic binge the night of April 22, 1976 in that bunk car. The additional charges against Drew, Rutherford and Crain likewise are supported by substantial evidence. The excuses offered by Claimants are too pathetically inadequate to require much elaboration. For example we are not persuaded that the condition of the bunk car can be attributed to "strong winds" blowing through the area, that the empty beer cans all were "ash trays," or that the unconsumed beer and alcohol were just being stored for transport home after duty hours. We take no joy in presiding over the wholesale dismissal of a gang of employees but clearly Carrier acted reasonably in concluding that they were culpable and, given the offenses, the penalty was not excessive.

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;

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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 30th day of November 1979.