

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22973
Docket Number CL-23086

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8845)
that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, by dismissing Mr. Robert Heck from service following investigation held August 31, 1978.

2. Carrier shall reinstate Claimant Heck to his position and reimburse Claimant for any lost wages.

3. Carrier shall also clear Claimant's record of all allegations surrounding this dismissal.

OPINION OF BOARD: In the early afternoon of August 9, 1978, Mr. Robert Heck, the claimant, during his assigned work hours was found in the lavatory sound asleep snoring. The Carrier by letter of August 14, 1978, charged claimant as follows:

"Conduct unbecoming an employee in that you were found sleeping while on duty at 1:55 P.M. on August 9, 1978."

He was notified to appear at a formal investigation on August 23, 1978, to develop the facts and place his responsibility, if any, concerning these charges. He was properly notified under the rules of the agreement of his rights to representation and to provide witnesses. The formal investigation, after an agreed upon postponement, was held on August 31, 1978. A copy of the transcript of the investigation was made a part of the record.

The Carrier produced competent evidence that claimant was asleep snoring loudly in the lavatory while on duty.

Claimant produced a statement from a Doctor Romero indicating that he had given him Donnatal and Etrafon which would cause him to become drowsy. Claimant had not informed his supervisor that he was taking such medication

which would affect him in this manner. Claimant testified that he had been taking this medication and that he felt drowsy before going to the rest room. He did not recall what time he went into the rest room nor could he remember being asleep but stated he undoubtedly was; acquiescing to his guilt of the charges.

Inasmuch as the claimant did not produce any witnesses, the Board must rely on the Hearing Officer's determination of the credibility of his testimony. The Board upon careful examination of the entire record concludes claimant was guilty as charged. We must look to the claimant's record, which was clearly presented in the investigation, to determine if the punishment fits the crime.

The record follows:

In January 1975 claimant's supervisors counseled him about his tardiness and absenteeism and warned him future abuses would jeopardize his employment. During the period between August 12, 1974, and January 14, 1975, he was late 10 hours and 42 minutes; absent from duty 177 hours 25 minutes account sickness and family sickness; appointments 1 hour 30 minutes; personal business 14 hours 2 minutes and military 8 hours; a total of 211 hours and 39 minutes absent from his job.

In April 1975 he was suspended for 90 days account late reporting and absences from work and other charges. He was again counseled about his deportment and warned that future abuses would result in more severe discipline. Upon his return to work from this suspension in August, he was again counseled and warned that he must comply with the rules and regulations of the company. Upon return to employment he obtained an assignment in the Moncrief Yard office.

In October 1976, prior to becoming reassigned to a position in Customer and Freight Accounting, where he was employed prior to the 90 day suspension, claimant was again counseled by his supervisors about his past deportment and warned again that he must comply with all office rules and regulations.

On November 26, 1976, the second month after being reassigned to his position in Customer and Freight Accounting, another letter was written to claimant confirming the counseling given to him on the 24th concerning his deportment since assignment to his new position. The record showed he was late as follows:

"November 2	45 minutes
November 15	16 minutes
November 22	45 minutes
November 24	3:00 hours "

He was again warned in this counseling session that any further late reporting or failure to follow office rules and regulations would result in the application of suitable discipline.

On September 23, 1977, another letter was written claimant warning him that his performance was unsatisfactory in that during the period January through September he had been absent from his position, other than vacation, a total of 249 hours or 16.55% of the total time. He was late 23 times.

On November 9, 1977, claimant voluntarily accepted 30 days suspension for reporting late and for leaving his work location without permission.

The Board finds that the record clearly identifies the claimant as being chronically afflicted with absenteeism and a total lack of responsibility towards his position. Based on the Carrier's long history of patiently counseling this employe on his deportment, and Carrier's showing of leniency, the Board is convinced the problem with claimant is incurable. Therefore, the Board affirms the judgment of the Carrier in its discipline and finds it not excessive. The Carrier's action in imposing the discipline was justified and with sufficient cause. The action was not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline imposed.

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

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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. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1980.