

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22990
Docket Number CL-23187

A. Robert Lowry, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8925)
that:

1. The Western Weighing and Inspection Bureau violated Rule 28, among others, of the current working agreement between the Brotherhood and Western Weighing and Inspection Bureau when it arbitrarily assessed discipline of termination on employee J. Jacobsen, effective at 11:00 a.m., September 12, 1978.

2. The Bureau shall now be required to clear Claimant's record of all information related to this matter.

3. The Bureau shall further be required to reinstate Claimant J. Jacobsen with all seniority rights unimpaired and pay him for all time lost at his respective rate of pay, beginning at 11:00 a.m., September 12, 1978, and running continuously until this dispute is settled.

OPINION OF BOARD: The claimant, Mr. J. Jacobsen, a Supervisor of Inspections employed by the Western Weighing and Inspection Bureau, was observed sitting at a bar with a drink before him at approximately 11 AM, September 12, 1978. Claimant was suspended from service at that time and on September 14, 1978, by certified mail, was charged with violation of Memorandum No. 1 when found on September 12, 1978, drinking intoxicating liquor while subject to duty. He was notified to appear at an investigation and hearing into the charges on September 18, 1978, for the purpose of ascertaining the facts and determining his responsibility in connection with the charges. He was properly advised under the rules of the agreement of his right to representation and to provide witnesses in his support.

The investigation and hearing was held on September 28, 1978, after two agreed upon postponements.

The record shows that Mr. E. E. Quinn, District Manager of the Bureau, in the company of Ray Bauer, Chief Clerk to the District Manager, after tracing claimant's work schedule found him in the bar, which is separate from the restaurant, of Roy's Corral and Steak House, with a drink before him. Bauer ordered from the Bar Maid two of the same drinks served the claimant. They had their two drinks, with the ice cubes removed, placed in paper containers, for transporting to the Missouri Analytical Laboratories where the content was analyzed and found to contain 7.2% alcohol. The claimant was notified by Quinn at the bar that he was being taken out of service for drinking while on duty. As they left the bar claimant asked for another chance but was declined by Quinn.

Claimant testified that the drink in question was "grapefruit juice on the rocks."

Considerable argument was had during the investigation over the Bureau's action to have the two drinks they ordered analyzed rather than claimant's drink which was readily available. Claimant was well aware of what was taking place when the two Bureau representatives accosted him in the bar and if he was in fact drinking "grapefruit juice on the rocks," he could have at that time insisted that they take his drink for analyzing. But he did not do that. Nor did he call upon the Bar Maid to testify at the investigation to support his position. It would seem to this Board that a "grapefruit juice on the rocks" served to a lone customer at 11 AM would have been a sufficient rarity to have made the Bar Maid a prime witness for the claimant. Inasmuch as claimant chose not to produce witnesses to support his position, the Board must rely on the Hearing Officer's impression of the credibility of the claimant's testimony.

The evidence produced in the investigation supports the charges of the Bureau. To determine whether the punishment was excessive, the Board must look to the record of the claimant.

The record shows a long history of alcoholic abuses. The first offense appearing in the record was in 1972 when the claimant admitted drinking on duty and promised to quit, no penalty was assessed. The record goes on to show the claimant voluntarily accepting suspension for drinking while on duty without an investigation, as follows:

1974	ten days
1975	ten days
1977	thirteen days

There were other suspensions for causes other than drinking on duty. As late as September 11, 1978, the day before the occurrence in this dispute, the claimant showed up in the District Manager's office in a questionable condition. The District Manager, Mr. Quinn, made no charges for that offense but instead continued to demonstrate this management's lenient and patient attitude toward this employe, by admonishing him to refrain from drinking while on duty. The record further shows upon the urging of his Organization claimant attended a CAREUNIT Outpatient Group on 15 dates to help him with his alcohol problems. He dropped out of the program after the 15th meeting. The Bureau as late as November 21, 1978, recognizing claimant's alcoholic problem, offered to reinstate him on a leniency basis upon proper evidence that his present condition had been corrected. The claimant rejected the offer.

The Board finds after a careful study of the record that the Bureau over the years had been exceedingly tolerant, patient and lenient with this employe. The event of September 12, 1978, was the proverbial straw that broke the camel's back!

We find the punishment was not excessive if we ignore the fact that alcoholism is a disease requiring special treatment. We also find it is difficult to ignore the Bureau's offer of reinstatement of November 21, 1978, reading in part, as follows:

"It was agreed that the Bureau would consider reinstatement of claimant Jacobsen on a leniency basis upon proper evidence that his present condition had been corrected."

The Bureau recognized that claimant's problems were caused by a "correctable" condition and offered reinstatement when the condition was corrected. This Board can do no less.

The Board, therefore, concludes, and so awards, that the claimant be offered reinstatement on a leniency basis, without back pay, but with seniority and all other rights unimpaired; provided, however, that claimant produces evidence that he has successfully completed a program with a recognized alcoholic rehabilitation organization such as the National Council on Alcoholism and he becomes and continues to remain a member of Alcoholics Anonymous. Otherwise the discipline imposed was justified and with sufficient cause and shall stand.

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

The discipline imposed was excessive as set forth in the Opinion.

A W A R D

Claim sustained to the extent and in the manner set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.