

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23256
Docket Number MW-23417

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Port Terminal Railroad Association

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

(1) The dismissal of Trackman Charles T. Blacknell for alleged violation of Rule 'G' was without just and sufficient cause.

(2) Trackman Charles T. Blacknell be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that claimant had been in Carrier's service approximately twenty five years and he was employed as a trackman. On July 2, 1979, he was notified of his dismissal from the service for the following reasons:

"On the morning of June 29, 1979, you were observed by Roadmaster D. Jones and appeared to be intoxicated. During the course of your conversation with Roadmaster Jones you were hostile in your mannerisms. In the same instance you were insubordinate in as much as you were told to go home and take a day of suspension without pay. With this occurrence in mind, the following rules you violated are as follows:

1. Rule G, of the Rules and Regulations for the Maintenance of Way and Structures. The use of alcoholic beverages, intoxicants or narcotics by employes subject to duty, or their possession or use while on duty is prohibited. Employes shall not report for duty under the influence of any drug, medication or other substance, including those prescribed by a doctor or dentist, that will in any way adversely effect their alertness, coordination, reaction, response or safety; nor shall such drug, medication or substance be used while on duty.

"2. General Rule 104. Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Association will not be condoned and must be reported. Withholding such information will be considered proof of negligence or indifference, and treated accordingly."

An investigation was requested by the Organization, which was conducted on August 1, 1979, at Houston, Texas. On August 10, 1979, claimant's dismissal was affirmed.

A copy of the transcript of the investigation conducted on August 1, 1979, has been made a part of the record. From our review of the transcript, the Board considers that discipline was warranted. However, permanent dismissal was excessive. The time that claimant has been out of the service should constitute sufficient discipline.

We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service. Claimant should understand that the purpose of this award is to give him one last chance to become and remain a reliable employe, and that further major infractions on his part will result in the permanent termination of his services. He should also understand that his work attendance record must improve.

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

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.