

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23582
Docket Number CL-23390

A. Robert Lowry, Referee

PARTIES TO DISPUTE: { Southern Railway Company
{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Mr. R. G. Register, Clerk, Charlotte, N.C., from the service of the Carrier for cause on March 5, 1979.

Since the agreement was not violated, Mr. Register is not entitled to eight hours' pay at straight time rate, beginning Friday, March 2, 1979, and continuing on a Monday through Friday daily basis until such time Mr. Register is restored to service, as claimed in his behalf by the Clerks' Organization.

OPINION OF BOARD: Mr. R. G. Register, the Claimant, was employed as a Demurrage Clerk by the Carrier with a seniority date of June 8, 1968, assigned hours 8:00 A.M. to 5:00 P.M., visited the Carrier's yard office in Charlotte, N. C. late in the evening of March 1, 1979. About 11:10 P.M. the Terminal Trainmaster came to the office and was informed that Claimant was causing trouble by disturbing the work force. The Terminal Train Master counseled Claimant and after several requests in the privacy of his office Claimant left the yard office. About two hours later Claimant returned to the office and resumed his disruption of the work force. At that time the Carrier's Special Agent was present and the Terminal Trainmaster was summoned by radio to return to the office. Both attempted to convince Claimant to leave the office without success. The Charlotte, North Carolina City Police were called who persuaded Claimant to leave the premises. On March 5, 1979, Carrier formally dismissed Claimant from its services by the following letter:

"On March 1-2, 1979, between the approximate hours of 11:00 pm and 1:30 am, you were found inside the enclosed areas of the Charlotte Freight Yard, Ticket, Train Order and Call Offices in violation of Superintendent of Terminals F. W. Keller's instructions dated June 3, 1977, which are posted."

"In addition, at same times and dates, you were observed in conduct unbecoming an employee in that you were intoxicated while on company property; you used profane language and created a disturbance, disrupting the orderly work of the clerks, operators and ticket sellers on duty."

"As a result of your violation of Superintendent of Terminals F. W. Keller's instructions and conduct unbecoming an employee, you are hereby dismissed from the service of Southern Railway Company. Promptly turn in all company property to Agent Terminal Control G. K. McKinna at Charlotte, N.C."

Claimant's representative requested and obtained an investigation/hearing pursuant to Rule C-1 of the applicable Agreement which was held on March 19, 1979. Copy of the transcript of the investigation/hearing was made a part of the record. A careful study of the transcript indicates Claimant was given a fair and impartial hearing; he was represented by an accredited representative of his Organization, they were permitted to extensively cross examine Carrier's witnesses, and Claimant was advised of his right to support his position with witnesses, but he chose not to.

Carrier's Bulletin No. 41 issued by Superintendent of Terminals Keller on June 3, 1977, and reissued on January 1, 1979, posted on all doors leading into the Freight and Yard Office, reads as follows:

"All employees, Charlotte Terminal: The past practice of unauthorized people entering the Call Office and Freight Office at their own discretion and in violation of posted bulletin, will refrain from this practice immediately. Any unauthorized person entering the office without permission will be subject to formal investigation and appropriate disciplinary action will be taken. Yard Foreman, Yard Engineers, and Switchmen are prohibited from handling the Crew Book. Information can be obtained from the Crew Dispatcher and book can be checked only by duly authorized representative."

The record clearly shows Claimant to be in violation of these instructions by his presence in the Yard Office during his off duty hours. Claimant contended he had come to the office to study an exempt report manual and had been authorized to do so by the Agent Terminal Control, who, in subsequent testimony, denied giving such authority.

Two witnesses, the Terminal Trainmaster and the Special Agent, both of whom had face to face discussions with Claimant during this period in question, testified that he smelled profusely of alcohol, slurred his words to the extent of being incoherent, was disheveled and most unsteady on his feet. Both concluded Claimant was thoroughly intoxicated and in such state was disrupting the work force. The record clearly shows the Train Master gave Claimant repeated opportunities to leave the premises but he refused to do so on his second visit which necessitated eviction by the City Police. The Carrier has proved its charges beyond reasonable doubt. The discipline assessed will not be disturbed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

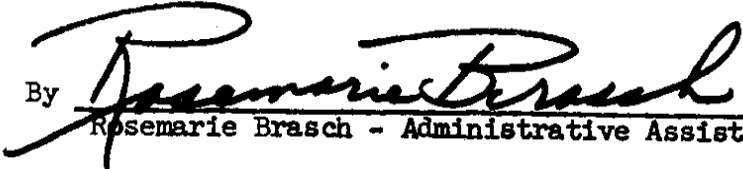
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Claim of the Organization is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.