

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24227
Docket Number CL-23799

Robert E. Peterson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9305)
that:

CLAIM NO. 1:

(1) The Carrier violated Rule 27 and others of the Clerks' General Agreement when on October 18, 1978 they did wrongfully discipline Mr. Rosario Rodriquez by dismissing him from service.

(2) Clerk Rodriquez be restored to service with all rights unimpaired, his record be made clear and that he be compensated for all wages lost, including overtime, as a result of the Carrier's actions.

CLAIM NO. 2:

(1) The Carrier violated Rule 27 and others of the Clerks' General Agreement when on October 31, 1978 they did wrongfully discipline Mr. Hosea L. Crymes by dismissing him from service.

(2) Clerk Crymes be restored to service with all rights unimpaired, his record be made clear and that he be compensated for all wages lost, including overtime, as a result of the Carrier's actions.

CLAIM NO. 3:

(1) The Carrier violated Rule 27 and others of the Clerks' General Agreement when on November 2, 1978 they did wrongfully discipline Mr. Henry Weatherspoon by dismissing him from service.

(2) Clerk Weatherspoon be restored to service with all rights unimpaired, his record be made clear and that he be compensated for all wages lost, including overtime, as a result of the Carrier's actions.

OPINION OF BOARD: On September 4, 1978, the Labor Day holiday, the three Claimants were observed by a Carrier Officer in charge of its Trailer Service Operation at Forest Hill, Chicago, Illinois, watching a baseball game on television and in possession of intoxicating beverages, e.g., beer, while on duty and under pay at Carrier's offices.

While a number of arguments have been advanced as to whether they were in fact in possession of the partially consumed bottles of beer, it is unquestioned

that they were the only three employees in the office when the Carrier Officer made his observations and called for a police officer to witness and photograph his findings. There is no doubt from reading the transcripts of the three separate investigations that Claimants were guilty as charged of being in possession and consuming intoxicating beverages while on company property and on duty.

The Board has also carefully considered the arguments of the Brotherhood that Claimants had been denied benefit of a fair and impartial hearing, that the hearing officer was biased, partial and incapable of affording Claimants a fair investigation, and Carrier failed to meet its burden of proving Claimants guilty of the charges. We find no evidence of record to support such contentions.

We agree with Carrier that substantial discipline is warranted, but in view of the fact two of the Claimants each had 10 years of service, with the third but four years of service, and this was their first offense of record, we believe the discipline that will have been served up to the date of this Award should be sufficient to have served its purpose in having Claimants recognize that drinking while on duty, even if it be but one beer, is a serious offense. Accordingly, Claimants will be reinstated to service with seniority and all other rights unimpaired, but without payment for time held out of service.

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

That the discipline was excessive.

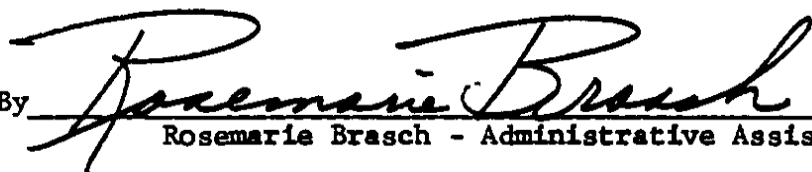
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By

A handwritten signature in cursive script, reading "Rosemarie Brasch", written over a horizontal line.

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.