

Award No. 108
Case No. None
BU-7982-33

SPECIAL BOARD OF ADJUSTMENT NO. 355

Parties: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 108

STATEMENT
OF CLAIM:

1. Carrier improperly dismissed Muriel J. Chandler from its service on October 23, 1961.
2. Carrier shall be required to reinstate Muriel J. Chandler with all rights unimpaired and pay her for all time lost.

FINDINGS:

The locale of the incident which led to Claimant's dismissal from the service is a cocktail lounge located on the perimeter of the concourse of Carrier's Grand Central Station in Chicago. The space is leased to Joseph A. Marek who operates the cocktail lounge.

Claimant, Mrs. Muriel J. Chandler, completed her tour of duty as Manager-Wire Chief-Operator on September 25, 1961 at 3:00 p.m. She admits to being in the cocktail lounge from 5:00 p.m., to 9:00 p.m., on that date, and during that period she admits to having drunk "maybe five, four" martinis. She joined or was joined by a Red Cap porter and the Station passenger agent during much of this time.

At the investigation conducted by the Carrier on October 10, 1961, Mr. Marek, the operator of the cocktail lounge said Claimant and one of the two men entered the lounge just before 5:00 p.m., and ordered two martinis. He prepared and served them. He continues:

"Shortly after that I was relieved by Robert De Varre behind the bar. Then the following morning I came in and Mr. De Varre told me there was a little commotion. I asked him from whom and he said the commotion was done by Mrs. Chandler she was the only one. After two glasses were broken he decided to close up and ask these people (including Mrs. Chandler, the claimant) to leave."

Shortly after Marek's testimony at the investigation, Mrs. Chandler was asked this question:

Q. "Mrs. Chandler, you heard Mr. Marek's statement, did you not?"

A. "Yes.

Q. "Was what he said substantially correct?"

A. "Yes."

The Organization argues that her acceptance of Marek's testimony "was only that part which covered the time he was present in the cocktail lounge."

Railroad Police Captain Martrano and Patrolman Stevens testified at the investigation, but their testimony related solely to interviews each had with Proprietor Marek - - and the one person who was present in the lounge from five o'clock on the afternoon in question until after Mrs. Chandler left shortly after 9:00 p.m. He was Robert De Varre, the bartender, who has been unheard of since October 5, 1961 and was still missing when this case came before this Board on January 24, 1963.

The testimony of the policemen, if they had been personally present in the lounge during the four-hour period in question, would be fatal to the claim. But the totality of their evidence was, as they admitted, hearsay.

We are thus confronted with a conflict between the claimant's own statements as to what occurred and the Carrier's action in assessing the supreme penalty of discharge, predicated not alone on her admissions, but mainly on hearsay evidence from a missing bartender whom claimant was unable to face or cross examine.

Irrespective of what feelings we may have as to the claimant's guilt or innocence, it is far more important that we uphold the traditional right of the accused to face, to question and to cross-examine a witness who testifies against him.

The precise charges against this claimant were:

"Conduct unbecoming an employee and use of intoxicants while on Company property on September 25, 1961."

The request of the Organization is that the Carrier shall be required to reinstate Muriel J. Chandler with all rights unimpaired and pay her for all time lost."

We will sustain the fore part of this claim solely on the basis of the Carrier's use of hearsay evidence originating with an important but missing witness; but we can find no justification in granting her any pay for time lost.

A W A R D

Claim for reinstatement of Muriel J. Chandler is sustained for the reason set forth in the Findings.

Claim that she be paid for time lost is denied.

/s/Edward A. Lynch
Edward A. Lynch
Chairman

Dissenting for Loss of Pay only
R. K. Anthis
Employee Member

/s/T. S. Woods
T. S. Woods
Carrier Member

Dissenting as to
Reinstatement

Dated at Baltimore, Maryland,
this 16th day of April, 1963.