



Award Number 17314

Docket Number CL-17904

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Robert C. McCandless, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6489) that:

- (1) Carrier violated the provisions of the Clerks' Agreement, effective July 1, 1963, when it notified E. J. Mikolajczyk following an investigation that he was discharged from the service of the Railway Company, effective November 30, 1967, and
- (2) Carrier now be required to reinstate E. J. Mikolajczyk into its service with seniority and other rights unimpaired and payment for all wage loss commencing with November 30, 1967.

**OPINION OF BOARD:** On December 1, 1967, Claimant was charged in a letter from the Superintendent with having used and having been under the influence of alcoholic beverages while on duty, in controvention of the Safety Rule Book. On December 4 an investigation was held by the Assistant Superintendent, at which time several witnesses testified that they smelled "fresh" alcohol on Claimant's breath, and on December 13, Superintendent Heimsjo wrote and informed Claimant he was dismissed from service as a consequence of the findings from the investigation that he had "used alcoholic beverages while employed. . . ."

Carrier alleges that Claimant violated the following two rules of the Northern Pacific Safety Rule Book Form 541:

"G. The use of alcoholic beverages or narcotics by employes subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibit. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

"702. Employes must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

On the other hand, Employes, in behalf of Claimant, allege that the charges against Claimant were not sustained by the evidence adduced at the

investigation, and further, that Claimant was denied a meaningful review of the discipline administered, and that the discipline was excessive.

As to the merits, Claimant was charged with having used and being under the influence of alcoholic beverages while on the job. Carrier's witnesses testified that "fresh" alcohol was smelled on Claimant's breath. No evidence was presented that Claimant acted or spoke abnormally. It was not alleged that he did not perform his duties properly or otherwise. Witnesses merely smelled alcohol. And as a consequence, Claimant was notified that he was dismissed from service.

This Board has said on many occasions that drinking while on the job is a serious offense—one which endangers the welfare and safety of fellow employees. But this Board has also stated that whereas we will not disturb the findings of an investigation where the evidence is sufficient to sustain such findings, we can and will overturn the findings where insufficient evidence has led Carrier to abuse his discretion. Regardless of the frail defense put forward in behalf of Claimant, the burden of proving the charges was on the Carrier, and this Board finds that Carrier did not meet that burden and that Claimant was dismissed on findings based on insufficient evidence.

We further agree that for one whose record shows no prior disciplinary action for thirty-one years, as is the case with the instant Claimant, the discipline meted out was clearly excessive.

We also agree with Claimant that he was denied a meaningful review of the discipline administered. Rule 55, "Grievances", under the existing Agreement reads, in part, as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Railway Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Railway Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Railway Company as to other similar claims or grievances.

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Railway Company shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employe as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Railway Company designated for that purpose."

Here, the Superintendent made the charges. The Assistant Superintendent conducted the investigation. Then the Superintendent who was not present

then administered the discipline. And then to make matters worse, Carrier's General Manager, in further declining to restore Claimant to his job, states that the investigation had clearly indicated that Claimant was "under the influence of alcoholic beverages. . . ."

This Board finds with the Employes on each of the three grounds advanced here and thus sustains Claimant's position.

**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 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 Agreement was violated.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.