

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That subsequent to investigation proceedings held on September 16, 1975, the Missouri-Kansas-Texas Railroad Company unjustly disciplined off duty Electrician C. M. Bennett for an alleged violation of the Uniform Code of Safety Rules, Rule G, and Circular No. D.P.-2.
2. That, accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to: 1) lift the deferred fifteen days suspension penalty assessed the Petitioning Claimant, Electrician C. M. Bennett; and, 2) clear any and all discipline notations from the personal record of Mr. Bennett, resulting from the alleged charges.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Following an investigative hearing, Carrier found Claimant guilty of the charge that he, "while off duty, came into the Parsons Diesel Shop employees' lunch room in possession of intoxicants and consumed same while on the Company's premises."

The penalty assessed was a 15-day deferred suspension. Since a year has elapsed since the imposition of the penalty, during which period the Claimant was not found guilty of further rules violations, the deferred suspension is no longer pending, and this portion of the claim is moot. What remains is a notation in the Claimant's personal record concerning the discipline.

The Claimant is charged with being observed by a Gang Foreman carrying and drinking a can of beer while in the employees' lunch room in an off-duty status.

The hearing officer heard testimony to this effect, as well as testimony by a number of other employees who were in the lunch room at the time, each of whom testified he did not observe the Claimant was carrying or drinking beer. There is, however, nothing in the record to cause the Board to substitute its judgment for that of the hearing officer who, as trier of the facts, accepted as valid the testimony of the Gang Foreman.

General Rule G of Carrier's Circular No. DP-2, released January 1, 1975, states:

"The use of intoxicants ... is prohibited ..."

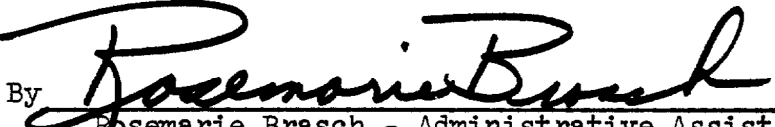
There are no grounds for the Board to find the penalty inappropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of December, 1977.