

Testimony of company witnesses reveal that about 10:45 A.M. on the date under consideration claimant's supervisor during conversations with Mr. Ross noticed that his eyes were half closed and smelled alcohol on his breath. He called two other company officials to observe Claimant's condition. All testified that his eyes were drooping and alcohol was present on his breath. Claimant promptly admitted that he had been partying late and had drunk a beer some time during the morning. The witnesses testified that claimant's supervisor asked him if he would consent to go to the hospital for a blood alcohol count, noting that he had a choice of whether he wanted to go or not. Mr. Ross readily consented to take the test and in fact signed a statement to that effect at the hospital. The Organization views such action as a violation of claimant's rights since he did not have the benefit of counsel with the local representatives. The record indicates that the decision was freely made by Mr. Ross. The claimant waived the right of counsel and the Carrier cannot be faulted for his action.

The alcohol count introduced in the record indicated that claimant had a count of 0.182 gm. The doctor indicated that a count of 0.10 gm would show recent intoxication. An exhibit in the record cites Michigan law to the effect that 0.10 gm or more constitutes a condition of being under the influence of alcohol.

The Organization maintains that the rule was not violated even though the alcoholic content was above normal since the Carrier did not prove that the claimant's ability to function was impaired. We disagree. The rule simply states the employee will not be under the influence of intoxicants or any other substance which will cause impairment of physical abilities.

Based on the testimony of competent witnesses and the doctor's report this Board concludes that claimant was under the influence of intoxicants and the rule was violated. There is nothing in the record to indicate that the penalty was excessive. A review of claimant's past record indicates a performance far from exemplary and we must conclude that the Carrier's action was well within its legal rights.

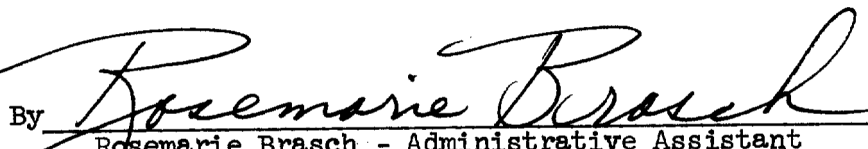
A W A R D

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 23rd day of July, 1980.