

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute:

(International Brotherhood of Firemen & Oilers
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(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer James K. Roen, Minneapolis, Minnesota, was unfairly dismissed from service of the Burlington Northern, Inc., effective February 1, 1979.
2. That, accordingly, the Carrier be ordered to make Mr. James K. Roen whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 employees 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 investigation held on January 11, 1979, the claimant was discharged for purportedly being absent without proper leave on December 31, 1978 and for violation of Rule G (consumption of alcoholic beverages while subject to duty) on the same date. The hearing was conducted in a fair and regular fashion.

The underlying facts are hotly contested. At 8:30 a.m. on December 31, 1978, which was one and one half hours after his shift began, the claimant called his general foreman and stated he would not report for work as he had been out dancing all night. The claimant told the foreman that he said he was sleepy and unable to report to work. He also said he was "half crooked" or "slightly smashed". The general foreman, according to the claimant, never indicated that the claimant would be denied permission for his absence. The general foreman contradicted claimant's rendition of the telephone conversation. According to the foreman, the claimant admitted that his drinking and partying cause his unfit condition and that his absence was unexcused. The claimant admitted some rule violations during the

hearing. However, these admissions contradict his factual testimony. For example, the claimant admitted he violated Rule G but he twice unequivocally testified that he did not consume any alcoholic beverages the evening before his December 31, 1978 shift. (This testimony was affirmed by a relative of the claimant who also attended the party.) Due to the claimant's absence on December 31, 1978, the carrier had to pay overtime for a substitute employee. We will examine each charge separately as the carrier must independently proffer substantial evidence to support each charge.

From the record, there is clearly substantial evidence that the claimant was absent without proper authority on December 31, 1978. Regardless of whether or not he was drinking the claimant freely conceded that he was tired because he had been to a dance party. The organization argued that the claimant is protected by Rule 15(f) which excuses employees who are unavoidably detained and promptly report their absence to the carrier. We have ruled in past awards that neither personal convenience nor personal comfort constitute an unavoidable absence. Second Division Award No. 7838 (Marx); Second Division Award 8196 (Kasher). Claimant's social life is subservient to his obligation to regularly report to his assigned duties. The extreme fatigue which prevented the claimant from reporting to work was the sole result of his own behavior. Therefore, we sustain the first charge.

Claimant also allegedly violated Rule G. According to the carrier, the claimant not only admitted to violating Rule G but also told his foreman that heavy drinking caused his fatigued condition on December 31, 1978. The organization rebuts by contending there is insufficient independent evidence to prove a Rule G infraction. Rule G states:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited."

We have interpreted Rule G to prohibit not only consumption of alcoholic beverages during an employee's shift but also employees are forbidden to drink alcohol in the period before reporting to duty when such consumption is likely to interfere with the employee's performance. Second Division Award No. 8135 (McMurray). However, merely drinking while off duty is not a violation of Rule G. Second Division Award 7494 (Marx). In this case, the hearing officer, who is the final arbiter of credibility issues, believed the general foreman's version of the telephone conversation. Thus, we make our ruling on the basis that the claimant did consume alcohol the evening preceding his morning shift.

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 Brasen - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of January, 1981.