

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(International Brotherhood of Electrical Workers
(System Council Number Eight
Parties to Dispute: ((Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the agreement effective September 1, 1949, in particular Rules 35 and 36, when it unjustly withdrew Electrician Patrick J. Brophy from service as of September 12, 1981 and subsequently unjustly dismissed Mr. Brophy on October 19, 1981 for alleged violation of Rule G.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reinstate Electrician Brophy with all of his seniority and other rights unimpaired, compensate him for all lost wages and benefits, and expunge the record in connection with this matter.

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 employes 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.

The Claimant, P. J. Brophy, is an Electrician with seniority since November, 1974. He was dismissed from service on October 19, 1981, for a Rule G violation. On September 12, 1981, the Claimant was seen borrowing another employe's car. Thereafter, the record discloses he drove to the West End Tap in Franklin Park. Apparently, the Claimant had lunch and left. The Carrier contends the Claimant admitted having a glass of beer with lunch. The Claimant returned to work and was approached by the Mechanic in Charge, Special Agent Harper, and Lieutenant Sedlack. The Claimant admitted having one beer at the West End Tap and also admitted to purchasing a six pack of beer. Five cans of beer were taken from the borrowed car by the Carrier's police. The Claimant did not dispute these assertions at the hearing. He also admitted to consuming a part of a can of beer while sitting in the car delayed by a train.

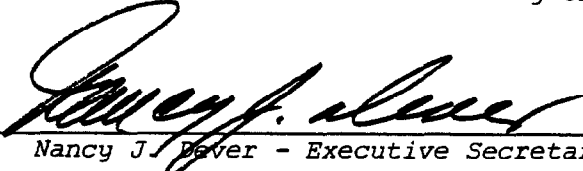
The Organization argues the Claimant failed to receive a fair trial and that his discipline was unduly harsh in that all other employees represented by the Organization charged with Rule G violations have been returned to service in connection with the Carrier's social counseling program. With respect to the trial, this Board's examination of the transcript does not reveal any basis to rule in favor of the Organization. While it may be said some answers to questions posed were incomplete or inconclusive, on the whole, the Claimant had ample opportunity to cross examine Carrier witnesses and challenge their testimony. The reality is the record developed by the Claimant's own testimony substantially corroborates the charges placed against him. The record developed on the property discloses the Claimant has been terminated twice in the past and reinstated on a leniency basis. This is not the exemplary record, as asserted. Finally, with reference to the charge that all other employees of the Carrier represented by the Organization disciplined for Rule G violations have been returned to service in connection with the Carrier's social counseling program, this Board finds no evidence to support that claim. In fact, as recently as 1982, Second Division Award No. 9270 involving the same parties included a Rule G violation among others and resulted in a denial. The permanent loss of employment is not upheld lightly. Unfortunately, this Board cannot hold the penalty imposed was disproportionate to the offense considering the Claimant's prior record.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.