

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM:

1. That Metra (Northeast Illinois Regional Commuter Railroad Corporation) violated the current and controlling Agreement between the International Association of Machinists and the Northeast Illinois Railroad Corporation dated December 16, 1987, Rule 29 in particular but not limited thereto, when it harshly and unjustly disciplined (suspended from service on June 16, 1989, pending an investigation and dismissed on August 4, 1989), Machinist William Cooper for alleged use of an intoxicant while on or subject to duty and on Company property.

2. That the Northeast Illinois Railroad Corporation reinstate Machinist William Cooper to service, make him whole for any and all losses incurred as result of the investigation conducted on June 28, 1989, and clear his service record of all reference to the incident.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant was regularly assigned as a machinist; assigned hours 7:45 A.M. to 3:45 P.M. On June 16, 1989, between 8:00-8:15 A.M. a Foreman encountered the Claimant in the locker room. The Claimant's behavior led the Foreman to suspect a possible Rule G violation. Another Foreman and two company police officers were called to assist in an assessment of the Claimant's condition. The Claimant was offered the opportunity of taking a breathalyzer or blood test but refused to do so without his doctor or lawyer present, a condition refused by the Carrier. Carrier Officers, based on their observations, removed the Claimant from service. Rule G pertains to the use of alcohol, intoxicants, drugs, etc., by employees subject to duty or their possession or use while on duty.

Formal Investigation was held on July 28, 1989, and on August 4, 1989, the Claimant was informed of the termination of his services for violation of Rule G.

At the Investigation two Foremen, a Special Agent, and a Captain of Police stated they either smelled or detected alcohol on Claimant's breath. The Foreman stated Claimant had watery eyes, his speech was slurred and that he was staggering. The General Foreman noticed the Claimant stagger, lose balance, that his speech was slurred and that he had a glazed glassy look. The Captain of Police stated the Claimant's eyes were glassy, that his speech was loud and slurred and that he was generally disoriented.

The Organization and the Claimant have offered two reasons for his condition. One, that he was sick and two, the accusations and questions made him nervous, causing "symptoms" judged to be signs of intoxication.

The Organization argues the Carrier did not meet necessary burden of proof. Also there was a procedural error in the handling of the Investigation because the Hearing Officer provided the Foreman with the statement he made following the June 16 incident and included it in the record.

We have reviewed the transcript of the Investigation and find that it was conducted in a fair and impartial manner. We do not consider the introduction and inclusion of the Foreman's statement in the record to be improper or in any way to have been prejudicial to the Claimant's case.


We believe the Carrier has met the necessary burden of proof in this case. There was substantial probative testimony given at the Investigation by four Carrier Officers to sustain a finding of guilty. This Board has no reason to doubt the testimony of Carrier's witnesses. The Organization's objections are not sufficient to set aside Carrier's action in this matter.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1990.