Award No. 9483
Docket No. SG-11429

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY (Gulf District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (Gulf District) that:

a. The Carrier violated the current Signalmen's Agreement, as amended, when, following an investigation held on December 30, 1958, it dismissed Signalman A. O. DeBruhl, Sr. on January 2, 1959, without just and sufficient cause and on the basis of unproven charges.

b. The Carrier should now be required to reinstate Mr. DeBruhl to his former position with seniority and all other rights unimpaired and compensate him at the Signalman rate of pay for all time lost.

OPINION OF BOARD: This is a discipline case. A. O. DeBruhl, Sr., herein called "Claimant", was discharged on January 2, 1959 on a finding by the Carrier that he had violated Rule G of the Rules and Regulations by using intoxicants and had violated Rule 122 of the Rules and Regulations for the Maintenance of Way and Structures by failing to protect his assignment on December 17, 1958.

Rule G states that "The use of intoxicants . . . is prohibited. Possession of intoxicants . . . while on duty is prohibited." Rule 122, entitled "Service Requirement", says that employes ". . . must report at the appointed time" and "must not absent themselves . . . without proper authority".

The Brotherhood contends that Claimant was arbitrarily discharged without just cause on the basis of unproven charges and should be reinstated with full seniority rights and compensation for time lost.

Claimant after finishing work on December 16, had supper with his outfit, including his foreman, Mayo, at a restaurant. Claimant left the group at about 7:30 P. M. Claimant testified that he went "bumming", was knocked

unconscious during late evening, was robbed of his wallet and watch, and recovered consciousness in jail at about 1:00 A. M. on the morning of December 17.

Claimant, during the late evening of December 16, had been arrested and charged with intoxication.

Claimant was first permitted to use the telephone at about 8:00 A. M. on December 17. Claimant called his foreman Mayo, at Mayo's office and was told that Mayo was not in. Claimant left no message for Mayo, and made no further attempt to contact Mayo.

Later, on December 17, Claimant pleaded guilty to the charge of intoxication. Claimant maintained at the hearing before the Carrier, that he had pleaded guilty, not because of guilt but solely to avoid confinement and expense.

Claimant, after an unsuccessful telephone call to a physician friend on the morning of December 17, reached the friend by telephone . The friend paid Claimant's fine and costs. Claimant was released at about 6:00 P. M. on December 17 and returned to his outfit.

Early on the morning of December 17, Mayo, Claimant's foreman had called the local hospital, and then the police, and had been told by the police of Claimant's situation. Mayo later learned of the disposition of the charge against Claimant, by inquiry to the police, made through a subordinate.

Nothing shows that Claimant drank on the job. We need not discuss how far Rule G might, in application, be so far extended as to constitute an unreasonable intrusion upon privacy. Suffice it to say that Rule G condemns drinking which makes an employe unable to protect his assignment. That condemnation here applies.

The Brotherhood contends that a plea of guilty to a charge of intoxication, does not, of itself, establish the truth of the charge, any more than would dismissal, on motion by the prosecution, establish, of itself, the falsity of the charge. We do not reach that question for the record as a whole supports the conclusion that Claimant's plea was not solely a matter of expediency.

Claimant also ran afoul of Rule 122, quoted above. Claimant left no message for Mayo. Further Claimant made no other effort at contact. That Claimant could have, is shown by his second telephone call to the friend who paid his fine.

Nor does foreman Mayo's knowledge as of the morning of December 17, that Claimant was unavailable, affect the result. Whatever significance such knowledge might have in a different context, nothing indicates that Claimant knew of or relied upon Mayo's knowledge in failing to contact Mayo.

Claimant, according to the Carrier, had been discharged in 1951 for violating Rule G. According to Claimant, he quit. Whether Claimant's termination in 1951 was the result of discharge or resignation, it is clear that he sought return to work in 1954 as a matter of leniency and was returned on that basis subject to certain restrictions, one of which was that his responsibilities be limited.

Under the applicable principles of review, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1960.