

Award No. 9865
Docket No. TE-11929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District) that:

H. C. Cole, who was improperly and unjustly dismissed from the Carrier's service on June 24, 1959, be restored thereto, and returned to his former position of Ticket-Agent-Operator at Le Porte, with all rights unimpaired and paid for all time lost.

OPINION OF BOARD: The Claimant, a Ticket-Agent-Operator at La Porte, Indiana, was dismissed on June 24, 1959, for an alleged Rule "G" violation on June 15, 1959.

An examination of the record establishes that Claimant received a full hearing, on due notice, and had ample opportunity to be represented, to present his case and to examine and cross-examine witness.

At the hearing, Claimant admitted that liquor might have been smelled on his breath on the day in question, June 15, 1959, but insisted that he had not consumed anything of an "alcoholic nature" on that day and had not "taken a drink" since 11:30 P. M. on his rest day, Sunday, June 14, 1959, about ten hours before going on duty. Claimant also conceded telling the Freight Agent that he had had a can of beer at lunch on June 15, but he maintains that he said it as a joke.

On the other hand, there is testimony that an angry customer had registered a complaint against Claimant on June 15 (apparently regarding lack of service at the ticket office) and that the Freight Agent assigned to look into the matter shortly thereafter smelled liquor on Claimant's breath, found him in "a very nervous state of confusion, very shaky" and was satisfied that he could not continue with his work at the time. There is also evidence that the ticket office was then closed and that a drunkometer test administered about

one hour later by a qualified City Police officer showed a reading of .197 which, according to the officer, is the equivalent of eight ounces of whiskey or eight bottles of beer in Claimant's system at the time of the test.

On this record it cannot be denied with validity that there is supporting evidence for the Carrier's findings that Claimant used intoxicants while subject to duty in violation of Rule "G". In line with numerous prior awards we will not disturb these conclusions since they are based on substantial credible evidence, even though allowances are made for possible inaccuracies in the drunkometer test results. See e.g., Awards 9322, 7468, 6012, 5832.

Rule "G" is a reasonable and important regulation and we are most reluctant to disturb in any way the discipline decided upon by the Carrier for its breach. In this instance, however, there is no evidence that in all his thirty years employment with the Carrier, Claimant has committed a single material rules infraction other than the one now under consideration. In view of that fact as well as his lengthy service, both of which are impressive considerations, and since it has not been established that there was any connection between the customer's complaint and a rule's violation, it is this Referee's conclusion that the extreme penalty of dismissal is excessive.

We will direct Claimant's reinstatement with full rights unimpaired but without compensation from the date of his dismissal until his reinstatement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated to the extent indicated in the Opinion.

AWARD

Claimant reinstated but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1961.