

Award No. 18405
Docket No. SG-18728

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

Mr. W. J. Shallies be reinstated to his former position with all rights restored and compensation for all time lost from time he was removed from service preceding investigation until restored to his former position.

(Carrier's File: 011-181 [S])

OPINION OF BOARD: Claimant, a signal maintainer, was discharged for allegedly violating Carrier's Rule "G," which reads in material part:

"The use of alcoholic beverages, intoxicants * * * by employees subject to duty, or their possession while on duty, is prohibited."

There is no disagreement that Claimant was drinking beer at a public bar at approximately 12:30 A. M. on March 26, 1969, a time when he was not on duty and not being compensated. There is no contention in this case that Claimant was unable to perform any assigned duties by reason of his drinking beer since the record does not indicate that he was called for duty nor that there was any necessity or intention of calling him for duty prior to his next regularly scheduled work time, nor is it alleged that Claimant's speech, physical coordination or mental coherence were affected or impaired by reason of his having consumed beer. The sole contention of Carrier is that Claimant drank an alcoholic beverage while subject to being called for emergency duty in the event of an unscheduled need for his services.

As stated, there is no question concerning the fact that Claimant used an alcoholic beverage. The issue is whether he did so at a time when he was subject to duty within the meaning of Rule G. The Carrier did not submit evidence as to the exact status of Claimant at the time he drank the beer, that is, when Claimant had last been on duty, when he was next scheduled to report for duty, whether March 26th was Claimant's rest day, or if Claimant was the only signal maintainer available to be called in the event of an emergency. Apparently Carrier views these considerations irrelevant since its posi-

tion is that Claimant is subject to duty at all times unless he notifies Carrier that he does not wish to be called for extra duty.

Carrier urges us to interpret Rule G as prohibiting the use of alcoholic beverages in any amount by an employe off duty unless he gives prior notice to Carrier. We are unaware of any case, and none has been supplied to us, where Rule G has been interpreted to prohibit off duty drinking of employes where that drinking did not cause the employe to leave his position uncovered or did not render the employe unfit to perform his assigned duties. "Subject to duty" has been uniformly interpreted in the past as a status which cannot be determined without reference to the facts of each case where the issue arises. Rule G has never been held to be a regulation which extends to every minute of an employe's private life and inflexibly dictates off-duty conduct. We hold that under the circumstances presented herein Carrier did not have just cause to discharge Claimant since Claimant was not subject to duty within the intendment of Rule G.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim sustained. All record of the charge against Claimant to be stricken from his record and Claimant to be compensated for all time lost from the time of his removal from service. Since Claimant has been reinstated with all seniority rights reinstatement need not be provided for herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.

CARRIER'S MEMBERS' DISSENT TO AWARD 18405, DOCKET SG-18728
(Referee Rosenbloom)

We respectfully direct attention to the uncontradicted facts and evidence reviewed in the memorandum which a Carrier Member submitted to the Referee when this case was discussed in panel. We believe these facts and evidence establish beyond any shadow of doubt that there was no valid basis for this claim.

We dissent

**G. L. Naylor
G. L. Naylor**

**R. E. Black
R. E. Black**

**H. F. M. Braidwood
H. F. M. Braidwood**

**P. C. Carter
P. C. Carter**

**W. B. Jones
W. B. Jones**