

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19887
Docket Number **MW-20146**

Irving T. Bergman, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of Crossing Watchman Edward Robinson for allegedly violating rule "G" was improper, unjust and disproportionate to the offense with which charged (System File **MW-FTW-71-10**).

(2) Crossing Watchman Edward Robinson be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all wage loss suffered, all in accordance with Rule 22 **(e)**.

OPINION OF BOARD: Claimant was dismissed after hearing for not protecting his assignment and for violation of Operating General Rule "G".

The facts as developed at the investigation hearing are as follows: Claimant telephoned at **2:53** P.M. that he could not report for his regular **assignment** because he was too drunk to work. His regular starting time was 3:00 P.M. He understood the meaning of Rule "G", tr. **p.p.** 4, 5, 12.

The Carrier concluded from this uncontradicted testimony that there was just cause to penalize the claimant. In support of the penalty, the Carrier reviewed claimant's record in a letter to the General Chairman, Carrier's Exhibit "G", stating that: "On January 18, 1965, the claimant was dismissed--- for his negligence in failing to promptly lower the crossing gates--- resulting in an accident fatal to two motorists." Six months later, he was returned to service with seniority unimpaired but without pay **because** of his previous clear **record** of approximately fourteen years. On September 3, 1970, the claimant was again dismissed after having been found **guilty** of using intoxicants while on duty as a crossing watchman on August 17, 1970. Six months later, claimant was restored to service, penalized to the extent of time actually lost. This Division remitted the penalty in that case to **one-** half the time lost; the record at that time failed to include knowledge of the first dismissal.

The Organization has argued that Claimant protected his assignment by telephoning between **2:30** and 3:00 P.M., and that he should not be found guilty under Rule "G" because he was honest enough to state why he could not report for work. The Organization also contended that an **employee** does not violate Rule "G" when he drinks intoxicating beverages on his own time.

In addition, the Organization accused the Carrier of making a "special case", of claimant, tr. p. 6, Q. 45, 46; that they were watching him because of **excessive** absenteeism, tr. p. 11, Q. 87, 88, and tr. p. 12, Q. 96.

Both parties have submitted prior awards for our consideration. **They** refer to well established policies of the Board with regard to our authority to review the testimony, the decision after hearing and the degree of the penalty. In this case it is not necessary to analyze the prior Awards because certain conclusions are obvious, to wit: Notice to the Carrier less than ten minutes before starting time for a regular assignment for the reason given cannot be considered as protecting a regular assignment. The late notice was not the result of an emergency. It was the result of a self induced physical condition. The honesty of the claimant in admitting his condition is questionable because such late notice would have required an explanation in any event. The violation of Rule "G", in this case, follows from drinking intoxicating beverage on personal **time** to the extent that it affected claimant's ability to **report** to work in a condition **to** perform the responsible task of a Crossing Watchman. The alternative was to report for work unfit for duty, thereby prejudicing public safety or risking violation of operating rules which require reporting in a fit condition to **perform** the required work.

The penalty must be regarded in the light of two previous dismissals with leniency consideration extended in each case. In the second case, this Division found claimant guilty and reduced the penalty. The present situation occurred about seven months after claimant was returned to service. The need to cover claimant's assignment within minutes after the late telephone notice shows lack of concern for public safety at a railroad crossing. **It** was necessary to assign an **employee** at the punitive rate, tr. p. Y, Q. 70, 71, 72. In the light of these facts, it is apparent that claimant has already received all the leniency he can expect from his length of service. Lastly, to accuse the Carrier of discrimination against the claimant for giving attention to a case of excessive absenteeism is inconsistent with good personnel policy.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Award Number 19887
Docket Number MW-20146

Page 3

There is substantial evidence to support the decision after hearing. The penalty is not arbitrary or excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.