

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20250
Docket Number CL-20225

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
{ Clerks, Freight Handlers, Express and
{ Station **Employees**
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, and **Jervis**
{ **Langdon**, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7293) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on T. G. Pfalsgraf, Clerk, Rose Lake **Yard**, East St. Louis, Illinois, St. Louis Division, Southern Region.'

(b) **Claimant** T. G. **Pfalsgraf's** record be cleared of the charges brought against him on May 4, 1972.

(c) Claimant T. G. Pfalsgraf be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant was charged with being absent from his position for a two hour period and a violation of Rule G. Rule G prohibits use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, and prohibits being **under** the influence of **same** while on duty.

The Organization alleges a prejudicial impropriety because an individual other than the hearing officer assessed the discipline. That contention was not urged on the property and may not be raised at this level. See Award 16348 (McGovern).

Claimant objects to the duplicity of charges. Under the facts of this case we find no impropriety. We find nothing to prohibit a Carrier from alleging a number of infractions when they occur during the **course** of a tour of duty. See Award 14573 (Stark).

Claimant contends that **Carrier** violated the contractual requirement that the "exact offense" be proven because he was charged with violation of a rule to which he is not subject. We have recently considered the **same** contention in Award 19977, concerning these same parties.

We noted, there, that "Rule G" is, by **common usage**, an all-inclusive term for any rule dealing with use or possession of intoxicants. No objection was voiced at the investigation and there is no indication that the Claimant was, in any manner, misled as to the nature of the charges against him.

On the evening in question, the **Yardmaster** was unable to locate Claimant (duty hours 3:00 p.m. to **11:00** p.m.) and another clerk at **5:35** p.m. At about **7:45**, he contacted the Supervisor of Yard procedures. The Supervisor was present when Claimant returned to his work area at **approximately 8:00** p.m.

At the investigation, Claimant asserted that he "marked off sick" at **6:20** p.m. and produced a Crew Dispatcher work sheet which showed such an entry. The same work sheet shows that he was relieved from duty at **8:10** p.m. by the Supervisor. The Supervisor concludes that the **6:20** p.m. entry was made after **8:10** based upon the chronology of events of the evening

When the Supervisor contacted the Crew Dispatcher at 7:55 p.m. to inquire as to Claimant's shift that evening, the Dispatcher made no reference to Claimant having "marked off" earlier. During the entire discussion with the Claimant on the evening in question, Claimant never stated that he had "marked off" but rather, stated that he had been working on his car since 6:00 p.m. When the Supervisor advised the same Dispatcher to **remove** Claimant from duty at **8:10** p.m., again no reference was made of an earlier entry. At no time did Claimant advise his immediate **Supervisor (Yardmaster)** that he was ill and leaving his tour of duty. Claimant and another clerk disappeared and reappeared at the same time. Finally, after removal from duty, the **Yardmaster** heard Claimant, on the telephone, presumably speaking to the dispatcher, state, "mark me off."

During the discussion with Claimant, the Supervisor asked if he had been drinking. He conceded that he had two (2) beers before coming to work. The Supervisor concluded that more than two beers had been consumed because Claimant's speech was slurred, his eyes were red, he spoke loudly and there was an odor of alcohol on his breath.

The record as a whole indicates that the **6:20 'mark off'** entry was made at a later time. But, even were we to consider the record in the **most** favorable light to Claimant and assume that he did, in fact, "mark off" sick at **6:20 p.m.**, the Board is of the view that Claimant's action of returning to his duty area in an intoxicated condition violated Rule G.

In addition to the admission of consumption of two (2) beers while subject to duty, we credit the testimony of the Supervisor, Laymen are competent to testify as to outward manifestations and physical actions and activities, and conclusions of intoxication have been sustained in this and in other forums, based upon lay testimony. See Award 19977, See also Award 15574 (Ives) and 19590 (**Blackwell**).

Upon the entire record, the Board is of the view that Carrier's determination is based upon substantial and credible evidence (including Claimant's own statements) and that there is no valid basis here for attempting to substitute our judgment for the disciplinary action taken by the Carrier.

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

That the Agreement was not violated.

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 17th day of May 1974.