

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20588

Docket Number CL-20694

Joseph A. Sickles, Referee

**PARTIES TO DISPUTE:** (**Brotherhood** of Railway, Airline and Steam-  
( ship Clerks, Freight Handlers, **Express**  
( and Station Employees  
(  
(Union **Pacific Railroad Company**  
( (South-Central District)

**STATEMENT OF CLAIM:** Claim of the System Committee of the **Brother-**  
**hood (GL-7566)** that:

1. **Claimant E. W. Mann** was improperly dismissed from the service of the **Carrier** following **formal** investigation held on **May 12, 1973.**

2. **Carrier** shall non be **required** to return **Claimant E. W. Mann** to the **service** of the **Carrier** with all **rights** under the **Agreement restored** and shall reimburse **Claimant** for all time lost commencing with **May 4, 1973** at the rate of the position of **Utility Bus Driver.**

**OPINION OF BOARD:** On **May 4, 1973**, **Claimant** was removed from service for **an** alleged violation of "**Rule G**".

Initially, **Claimant** **raises** a **procedural** issue. **Rule 45 (a)** states, in pertinent part:

"No employe will be disciplined or dismissed without a **fair hearing** by his **supervising** officer. **Suspension** in proper cases pending a hearing, which will be held within seven days of the time charge is made, or employee suspended, will not be considered a violation of **this principle...**"

Because **an investigation** was not held until **May 12, 1973**, the **Organization asserts that** the seven (7) day rule, cited **above**, was violated. In order to properly consider this procedural issue, certain **background information** is pertinent.

A notice **of investigation** was prepared on **May 6, 1973**, advising **Claimant** to report for **a hearing** at 10:00 A.M. on **May 7, 1973.** **Carrier** made a number of attempt6 to **personally** deliver the notice on the **6th**, at **Claimant's** residence, and attempted to contact him by **telephone**, to no avail.

Because of failure to contact Claimant, Carrier prepared another letter to Claimant, (May 7, 1973) postponing the investigation until May 12, 1973. The crew dispatch force was instructed to attempt to personally deliver the document at least once each day, and to call Claimant's residence once every four (4) hours.

The instructions were complied with, but no personal or telephonic contact was made.

At 2:00 A.M. on May 11, 1973 Claimant appeared at the Crew dispatcher's office. He received the formal notice and signed a document stating that he would appear at the hearing on May 12, 1973.

Carrier asserts that Claimant was aware that a notice had been prepared for him (and the record appears to confirm that fact) and Claimant's actions indicate that he was "hiding out". We can not, of course, speculate as to what may have motivated Claimant's lengthy absences from his home, but we do feel that Carrier took reasonable steps in an effort to contact Claimant. Claimant criticizes Carrier for failure to forward the notice by certified mail. The Rules agreement does not require such a procedure. Moreover, under this Record, it is questionable that use of the U.S. Mail would have resulted in an earlier notification to Claimant. If he was not home (when he had good reason to believe Carrier was attempting to contact him) for phone calls each four (4) hours, we question that use of certified mail would have altered the status of this record.

The Board feels that contractual provisions should be complied with, and that time limits, which are negotiated by the parties, should not be ignored. At the same time, we feel that each instance must be viewed upon its own merits.

Obviously, the original May 6 notification complied with the Rules Agreement. It then became necessary to reschedule the hearing when Claimant could not be located (or proceed without Claimant). The record is totally silent as to why Carrier chose the date of May 12, 1973 (which exceeded the seven (7) day Rule) when it had no knowledge, on May 7, 1973 that Claimant would not be served until May 11, 1973. Nonetheless, Claimant's disappearance did preclude Carrier from rectifying the situation. Finally, we note that the May 7, 1973 letter stated:

"Your signature to this postponement will indicate that you are agreeable to postponement and this postponement will not affect the validity of the hearing."

When Claimant received the notice, he signed a statement that he would attend the investigation on May 12, 1973.

We concede that the matter is not entirely free from all doubt, but under this record, we feel that Claimant's own conduct must be considered, as well as his apparent acquiescence to the date of the hearing. We specifically note that we do not comment upon other factual circumstances and record not now before us.

Concerning the merits, we note that C-t was employed from 4:00 P.M. to 12:00 P.M. by Carrier a6 a truck driver (delivering messages and personnel in a Company vehicle) and devoted about 75% of each shift to driving.

At about 8:10 P.M. on May 4, 1973 Carrier's Special Agent received an anonymous phone call which suggested that Claimant had been drinking. He and the Assistant Terminal Superintendent interviewed Claimant shortly thereafter. Both testified that Claimant had a strong odor of alcohol on his breath; had bloodshot eyes and slightly slurred speech. There was some conflict as to whether or not he walked in a steady manner. At or about 8:30 P.M. Grievant was relieved from duty. Subsequent to investigation, he was terminated.

Although Claimant denied that he had been drinking on duty, he did concede that he had consumed an alcoholic beverage at 1:00 P.M.

Claimant denied (at the investigation) that h6 had been drinking and produced three (3) witnesses who worked on the same shift with Claimant and were in close contact with him. All three (3) testified that they did not smell alcoholic beverages on Claimant's breath, and none noticed anything out of the ordinary to suggest consumption of alcoholic beverages.

While there is an apparent conflict of testimony, we note an absence of time frames. The two Carrier witnesses testified a6 to Claimant's condition at 8:30 P.M. The record is entirely void of any indication a6 to when Claimant's first two witnesses were in close contact with Claimant. It may have been shortly after Claimant reported for duty at 4:00 P.M. The third witness stated that his contact with Claimant was between 6:00 P.M. and 6:30 P.M.: a period of two (2) to two and one half (2½) hours prior to the confrontation which lead to termination.

The Board concludes that Carrier has presented substantive evidence to demonstrate that Claimant violated Rule G.

Claimant was initially employed by Carrier in 1938. In 1949 he resigned, but was reemployed in 1951. While **Claimant** had certain disciplinary **difficulty** in 1970 and 1972, there is no indication of any Rule G violations in his thirty-four (34) years of service with Carrier. While we are quite reluctant to overturn a Carrier determination of quantum of punishment, we feel that Claimant's long years **of** service, are worthy of the Board's consideration.

Surely, a Rule G violation, is a most serious matter, especially when it involves an **employee** who drives a **company** vehicle, and severe disciplinary action is **warranted**. But under this record we feel that a permanent discharge is excessive.

We do note that Claimant's disciplinary difficulties have been confined to the last few years. His future employment tenure with the Company will obviously be closely scrutinized, and he **alone** can control that tenure.

We will restore Claimant to active service with seniority **and** other rights unimpaired, but without compensation for lost **compensation**.

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 discipline of termination is excessive.

A W A R D

Claim sustained to the extent stated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.

CARRIER MENDERS DISSENT TO AWARD 20588, DOCKET CL-20694

(Referee Sickles)

In view of the seriousness of the offense committed by the Claimant, we **dissent** to that portion of the award which restores Claimant to Carrier's service.

W F Taylor

W F Taylor

W F Taylor

W F Taylor

W F Taylor