

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21292
Docket Number MW-21470

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

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

(1) The dismissal of **Trackman** F. J. Blada, Jr. for alleged "violation of Rule '**G**'" was arbitrary, without just and **sufficient cause** and on the basis of **unproven charges (System** File D-11-1-302).

(2) Claimant F. J. Blada, Jr. **be** accorded the **benefits** prescribed in Agreement Rule **19(d)**.

OPINION OF BOARD: Claimant was dismissed for alleged violation of **Rule** "**G**" after an investigation. He had six months service with Carrier.

The initial question before us is whether or not there was substantial evidence adduced at the investigation to support **Carrier's COIL' clusion** that Claimant had violated the rule. An analysis of the record of the hearing indicates that there was **testimony, unrebutted**, that Claimant's breath smelled of alcohol and that the thermos jug, which ha admittedly had been drinking from contained wine. **There was in** addition the evidence that the contents of the jug had been **analyzed** and found to contain "ethyl alcohol". Claimant, of **course**, denied that he had been drinking though admitting at the investigation that he had taken a drink out of the jug In **question**. The contradiction in the evidence **relates** to the contents of the thermos jug; **the** testimony of the two Carrier officers that it contained wine as against the report fmm the testing laboratory that it contained ethyl alcohol. Regardless of the apparent discrepancy, it is quite evident that the jug did contain an intoxicating beverage of some type and further that Claimant did drink from it, while on duty. We must conclude therefore that on a prima facie basis Carrier has established a violation of Rule "**G**". Petitioner's contention that there was no indication of how the thermos got on the property with the alcohol in it is not relevant to the basic issue of the dispute.

In the light of the implications of the particular rule violation and Claimant's short service with the Carrier, there is no basis for disturbing Carrier's penalty: **it** was not arbitrary or capricious.

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 12th day of November 1976.