

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22249
Docket Number CL-22256

Nathan Lipson, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks; Freight **Handlers**,
(**Express** and Station **Employees**
(
(Southern Railway Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood
(CL-8467) that:

(a) Carrier violated the **Agreement** at **Birmingham**, Alabama, when it **dismissed** Mr. R. L. Anthony **from** the service of the Carrier for alleged failure to timely protect his **assignment**, for allegedly reporting for work **under the** influence of alcohol and alleged conduct unbecoming an **employee**.

(b) Mr. Anthony **shall** be restored to **service** of the Carrier with seniority and **all** rights unimpaired and compensated for all time lost beginning **May 31, 1976**, and continuing five (5) days per week until restored to the service and fully **compensated** for all loss.

OPINION OF BOARD: The **Claimant** R. L. Anthony has a seniority date of January 10, 1975. Consequently, when Mr. Anthony was relieved from service on the night of May 31, 1976, he had approximately **16 months** of service with the Carrier.

It is clear that the **Claimant** did not arrive at work at **11:00 p.m.** on May **31, 1976**, as scheduled. The Claimant testified that the reason for **same was** that he **had fallen** asleep in front of his TV set after having consumed **some** beer. Mr. Anthony received a call **from** Mr. **Sasseville**, Extra Board Clerk, to summon him to work, and the Claimant arrived on the job 28 minutes after his assigned starting time. At that time, a Special Agent of the Carrier's Police and Special **Service** Department detected the **odor of** alcohol on Mr. Anthony's breath.

Subsequently, Mr. Anthony launched a torrent of profanities and obscenities in the presence of Mr. Sasseville. A few minutes later, the **Claimant** apologized to Sasseville, explaining that he thought that **Sasseville** had turned him in, but realized that he had not. At approximately 1:00 a.m., the **Claimant** confronted **Mr. Bowen**, a **management** official, and addressed him in a derogatory and obscene **manner**. Mr. Anthony testified that he does not usually use obscenities, and that he particularly does not direct such words toward persons with **whom** he **converses**.

As a **result** of a review of the above incidents, the Claimant agreed to take a sobriety test at St. Vincent's Hospital. The test, which was administered at **2:25 a.m.**, over three hours **from assigned starting time**, showed Mr. Anthony's blood **alcohol content** to be **.05%**. It was established that an alcohol content of **.01%** is **normal**, while a content of **.1%** suffices to establish that a person is under the influence of alcohol for the purposes of establishing intoxication under **Alabama** law.

The Carrier acted against this **Claimant** on the basis of Rule G of the Operating **Rules**, which became effective March 10, **1972**, and reads as follows:

"An employee who reports for duty under the influence of alcohol or other intoxicant, an **amphetamine**, a narcotic drug, a hallucinogenic drug, or a derivative or combination of any of these, or who uses any of the foregoing while on duty, **will** be dismissed. Use of or being under the influence of any of the foregoing while on Company property or equipment is cause for discipline."

The Union has argued that the use of beer while watching TV during off-duty hours should not be a basis for discipline or discharge. With that general proposition, the **Board would** generally agree. **What** an **employee** does during his personal **time** is clearly his own business, and the Carrier should not ordinarily be concerned with activity not directly related to the performance of duties during working hours.

The problem, of course, is that when mind altering substances, such as described in Rule G, are con-d during non-working hours, the **mind** and body of the **employee** can become affected, and such effects can continue into scheduled work periods. Such instances, of course, may **legitimately become** the concern of the Carrier, because work **performance** may be affected, even though the prohibited substances were used before working hours.

The Union also makes the **argument** that the **consumption** of beer is legal in **Alabama**, and that such consumption prior to work should not be a per se basis for discharge or other discipline. **The Board is constrained to** accept the validity of that argument in cases where the evidence is clear that an **employee** did not report to work under the **influence** of alcohol. **To cite** an **extreme** example, it would not be right to discharge an employee for reporting to work after having had **one** beer with his dinner several hours prior to the start of his shift, where the **employee's** appearance and behavior are essentially normal.

But the evidence in this case conclusively demonstrates that the Claimant's situation is not within the scope of the **minimal** or inconsequential **drinking** prior to work, which is excusable. In the first place, the Claimant himself admitted that he had consumed beer while watching **TV** just prior to work. Upon his arrival on the job, he smelled of alcohol. More than two hours subsequent to the start of the shift, a sobriety test established that a substantial amount of **alcohol** was present **in** the Claimant's blood. **Although** Mr. Anthony was not legally intoxicated by **Alabama** driving **standards**, it is clear that he had an **amount** of alcohol in his body that was discernably above **normal**, and it **must** be **assumed** that **administration** of the test **immediately** upon his arrival at work, would have established an even higher level of alcohol.

Perhaps even **more** indicative of the **Claimant** being under the influence of alcohol on the night of **May 31** was his abnormal **behavior**. The extreme use of profanity and obscenity on the job is in itself undesirable behavior, but in the instant case it serves to point up that the Claimant was not in a norm3 state of mind. The Claimant himself testified that he never curses out people, so that his **performance** on the night in question can only serve to corroborate the fact that he was under the influence of alcohol.

All of the above thoroughly constitutes **overwhelming** evidence that Claimant. Anthony was guilty of a violation of Rule G as charged. The heavy evidence, coupled with the Claimant's short **tenure**, **established** that the **Board** should not substitute its **judgment** for the Carrier's discretion in this case.

FINDINGS: **The** Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the **Employee** involved in this dispute are respectively Carrier **and Employee** 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.

