

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24262**
Docket Number CL-24046

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station **Employes**
{ Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9450) that:

(1) Carrier acted in an arbitrary and unjust manner, thus violating Rule 37 of the current **agreement**, when it held Mr. R. J. Berg **from** service on **December 3, 1979** and dismissed him **from** service December 20, **1979** as the result of an investigation held on **December 13, 1979**.

(2) Carrier shall **now** be required to reinstate Mr. Berg services and **compensate him** for all **time** lost beginning December 3, **1979** and continuing **until** corrected.

OPINION OF BOARD: The general issue here **is** whether, under the facts of record, Carrier had just and proper cause for dismissing **Claimant** from its service for violation of Rule "G" or whether **some** lesser penalty **would** have been sufficient for the offense **committed**.

On **December 3, 1979** **Claimant** reported for service as an Agent-Operator at Decatur, Texas at **7:00 A.M.** **under** the Influence of alcohol. When it was determined that he was **having** difficulty with fully or **immediately** comprehending a track **motor** car line-up **which** was being transmitted to him by the Train **Dispatcher**, the matter was reported to the Chief Mspatcher, who, **in** turn, reported the matter to the Superintendent, Security. The latter, in the **company** of a Special Agent, drwe from Ft. Worth to Decatur, arriving at Decatur at **8:30 A.M.**, and observed Claimant's general demeanor, appearance or physical condition to be that which is consistent with **descriptions** used ordinarily to describe a person who **is** under the influence of intoxicants. While **Claimant** at first denied having been drinking, he subsequently admitted drinking bourbon until about 3:00 A.M. that morning, and reportedly stated that he was **"in** bad shape" when he **came** to work.

The Board finds no reason to burden the record with a discussion of the **arguments** and positions of the parties. There is no doubt from the record that Claimant was guilty as charged.

As to the severity of the discipline imposed, i.e., dismissal for an **employee** with 27 years of service, the **Carrier submits** Claimant was previously dismissed on **November 14, 1974** for violation of Rule "G" involving circumstances similar to those in this dispute. Further, that following rehabilitation treatment for alcoholism and social counseling, he was reinstated on a leniency basis on June 11, 1975. Given this fact, and in recognition that leniency is a prerogative of the Carrier, we find no persuasive basis for setting aside Carrier's

conclusion as to imposition of the extreme penalty of permanent dismissal for this latest infraction of Rule "G".

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 Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

