

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Roukis, Referee

Award Number **24417**
Docket Number **SG-24267**

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of P. L. **Meaders**, who was suspended from service for a period of sixty days effective September **13, 1980** (this was reduced to eighteen days), for all time lost, that all rights be restored, and that his record be cleared of any and all notations relating to this investigation." (Carrier file: **MofW-A-LA-0-19**)

OPINION OF BOARD: An investigation **was** held on August **23, 1980** to determine whether Claimant violated Rule G, when Carrier officials confiscated a bottle of **Lord Calvert** Whiskey from his possession on **August 13, 1980**. Based on the investigative record, Carrier concluded that he was guilty of the asserted charge and suspended him from service, effective September **13, 1980** for sixty (60) days. This disciplinary penalty was subsequently reduced to an eighteen (18) day suspension on September 22, 1980, but Claimant appealed the findings and disposition on both procedural and substantive grounds. Rule G which is germane to this dispute is referenced as follows:

"**The** use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use or being under the influence thereof while on duty or on Company property, is prohibited."

In defense of his petition, Claimant asserts that Carrier violated Agreement Rule **59(b)** when 'it failed to furnish him and his union representative with a copy of the investigative transcript within the required ten (10) days **time** limitation. He argues that the local chairman did **not** receive the trial transcript until **September 16, 1980** which was beyond the aforesaid requirement. He avers that he did not violate Rule G on August **13, 1980**, since he did not use any alcoholic beverage on that day nor was he **under** the **influence of intoxicants**. He contends that he was not on Company property or on duty when the two (2) Carrier officials confiscated the sealed bottle of whiskey from his Company leased vehicle, which he purchased for a friend who does not drive but instead was on his lunch break.

Carrier contends that it complied with the time limit requirements of Agreement Rule **59(b)**, since the notice of discipline assessment and the accompanying trial transcript were sent to Claimant and his representative on September 8, 1980. It argues that paragraph (b) of Rule 59 merely requires that the transcript be furnished to the affected **employee** and his representative within ten (10) days after the close of the investigation and avers that it comported with this

procedural requirement when it mailed the transcript on September 8, 1980. It asserts that the record evidence fully supports the Rule G violation, since Claimant **admitted** at the hearing that he possessed the bottle of whiskey on the charged date and argues that he was officially on duty at the time it was confiscated.

In our review of this case, we concur with Carrier's position. From the record, it appears that Carrier complied with the time limits of Rule 59(b) when it mailed the trial transcript on September 8, 1980. While there are distinctions on this point of procedural compliance, **we** find that Carrier technically furnished the transcript within the required **time** limits.

As to the substantive merits of this dispute, we find substantial evidence of record to support fully the asserted Rule G violation. One of the definable elements of a Rule G violation is the possession of an intoxicant beverage while on duty. Claimant was on duty at the time the bottle of whiskey was taken from his possession at approximately 1:45 P.M. and this unequivocal, **elemental** fact specific occurrence was an explicit violation of Rule G. We have no indisputable evidence that he was on his lunch break at this time, especially **when** the record shows that he normally takes lunch from 11:00 A.M. to 11:30 A.M. and his testimony that he only purchased an orange crush and cigarettes does not match with the sales receipt found in the grocery package containing the whiskey. One of the **Carrier** officials who was in the check out line in the market near the West **Colton** Terminal, **closely** observed him purchase the Lord **Calvert** Whiskey. Claimant offered **no** credible evidence to counter Carrier's facts and interpretative version of the events and his direct testimony acknowledging that he possessed the intoxicant beverage is a pointed admission of culpability. Possessing an alcoholic beverage while on duty is indeed a serious workplace offense, particularly because of its potentially disquieting impact on rail operations and the penalty imposed herein for this infraction was not unreasonable.

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.

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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 15th day of June 1983.