

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24502  
Docket Number MW-24565

George V. Boyle, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Northeast Illinois Regional **Commuter** Railroad Corporation  
( (former Chicago, Rock Island & Pacific Railroad Company)

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

(1) The ninety **(90)** days of suspension imposed upon Machine Operator V. R. Brooks, Jr. for alleged violation of Rule 'G' was arbitrary and capricious and upon the basis of unproven charges (**System** File RTA-D-956/D-11-18-15).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Machine Operator, V. R. Brooks, employed by the Northeast Illinois Regional Commuter **Railroad** Corporation, was assigned on October 10, 1980 to the Tie Gang working near 97th Street and Vincennes Avenue at Chicago, Illinois. At lunch time he and other **employees** bought their lunch and ate behind a grocery store adjacent to the work site. In the course of their lunch two of the Carrier's supervisors came to the area and confiscated an unopened can of beer in a paper bag which they had observed on the ground under the leg of Machine Operator Brooks.

Subsequently, after a proper hearing, Brooks was suspended for ninety **(90)** days for violation of Rule "G" which reads "Possession of intoxicants . . . while on duty is prohibited."

The Employees argue that the Carrier has not met the burden of proof, which is its **responsibility**, and has based its action upon mere suspicion and allegation and not probative evidence.

Further, it is argued that the Claimant was not on company property and was on his lunch period and **therefore** not "on duty" when the incident occurred.

The Board finds to the contrary on both contentions.

The claimant, in his testimony, admits that when the Carrier's agent took possession of the paper bag containing the unopened can of beer that it was under his leg and that the agent physically had to move the claimant's leg in order to **take** it. This is not circumstantial evidence; this is probative, physical evidence adduced by the Carrier's agents and corroborated and the Claimant's own testimony. It is not necessary for the material to be held in the hand or **for** the person to have contact with it to be considered under his control or in his possession. Thus the Carrier has met the burden of proof with respect to "possession of intoxicants", a disciplinary offense.

Moreover, while the **Claimant** was not actually engaged in work and not on Company property, he was in a "duty" status and subject to the rules with respect to such status. Therefore, the Claimant was not **immune** to the Carrier's jurisdiction.

Nevertheless, while the Claimant was properly disciplined for this infraction, ninety days suspension seems unduly harsh, particularly since, up until this time the Claimant had a good record. Accordingly, the **suspension** is reduced to thirty **(30)** days.

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

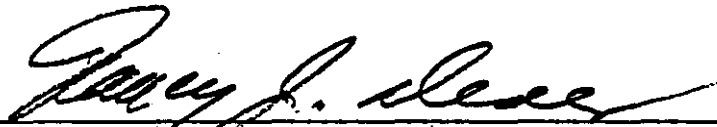
That the discipline was excessive.

A W A R D

Claim sustained **in** accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third** Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this **30th** day of **August** **1983**.

