

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24531
Docket Number CL-24422

Paul C. Carter, Referee

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

PARTIES TO DISPUTE: (

(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-9536**) that:

Carrier violated the Agreement at Charlotte, North Carolina, when on April 2, 1979, it dismissed Mr. **J. C. Wood** from the service for allegedly reporting to work on March 31, 1979, under the influence of **an intoxicant** in violation of Southern Railway Operating Rule G.

For this violation, the Carrier shall be required to restore Mr. **J. C. Wood** to service with all rights unimpaired and compensate him for all time lost, beginning on March 31, 1979, and continuing until such restoration has been accomplished.

OPINION OF BOARD: Prior to April 2, 1979 Claimant, with seniority date of October 1, 1973, was assigned to position of Ticket Clerk-Operator, Charlotte, North Carolina, with assigned hours 5:00 p.m. to 1:00 a.m., Wednesday through Sunday.

About 5:30 p.m., March 31, 1979, Claimant was observed by two Special Agents of the Carrier and a Trainmaster in what appeared to **be** an intoxicated condition. 'The Carrier states that the **Trainmaster** asked the **Claimant** if he wanted to take a blood test, which Claimant declined to do. The Trainmaster then relieved Claimant from duty. On April 2, 1979, Claimant was notified by Carrier's Agent, Terminal Control, that he was dismissed from the service of the Carrier for reporting to work March 31, 1979, on **or** about 5:00 p.m. under the influence of an intoxicant. On April 3, 1979, representative of the Organization made a formal request for an investigation on Claimant's behalf, as provided for in Rule C-1 of the applicable Agreement. The **investigation** was conducted on April 19, 1979, following which Claimant's dismissal was affirmed on April 21, 1979.

Carrier's Operating Rule **"G"** reads:

"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. (Effective March 10, 1972)."

A copy of the transcript of the investigation conducted on April 19, 1979, has been made a part of the record. A review of the transcript shows that the investigation was conducted in a fair and impartial manner. **None of Claimant's substantive procedural rights was violated.**

In the investigation the **two** Special Agents and the Trainmaster, who had observed Claimant on **March** 31, 1979, all testified that Claimant was under the influence of alcohol at the time they observed him. One Special Agent stated that he smelled the odor of alcohol on Claimant's breath, his eyes were glassy, his speech was slurred, he was unsteady on his **feet, and** that he was unable to operate his cigarette lighter. The other Special Agent testified that he smelled a strong odor of alcohol on Claimant, that he was unsteady on his feet, his speech was slurred, and that Claimant was under the influence of alcohol. The Trainmaster testified that he could smell an odor of alcohol on Claimant, that **Claimant's** speech was where he could hardly be understood, and his walk was unsteady. The Trainmaster went on to say that Claimant was **"flat drunk"**.

It has been held in numerous awards that laymen **are** competent to judge intoxication. There was substantial evidence in the investigation to support Claimant's dismissal.

In the on-property handling and in its submission to this Board, the Organization based its plea on behalf of Claimant's attendance, after his dismissal, in an Alcohol and Drug Abuse Program that had been previously initiated by the Carrier. We consider such a plea as a plea for leniency, which addresses itself to the Carrier and not to this Board. **However,** when the program was initiated by the Carrier, the Carrier's Chairman and Chief Executive Officer stated in a Circular to employees in the area involved:

"Should a Rule **'G'** violation occur, discipline will be administered regardless of whether the employee involved is a participant in **this program."**

The material **submitted** by the Organization also indicates that the purpose of the program was to help employees before there was a violation of Rule **"G"**.

On 'the record before the Board, there is no proper basis for the Board to disturb the action of the **Carrier**.

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 **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~~^{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 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.