

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Belt Railway Company of Chicago

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

(1) The dismissal of Track Laborer U. Medina and Machine Operator R. Santoyo for alleged violation of Rule 'G' on December 1, 1987 was arbitrary, capricious and on the basis of unproven charges (Carrier's File P/R U. Medina and P/RR. Santoyo.

(2) The Claimants shall be reinstated to service with seniority and benefits unimpaired, their records cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Roberto Santoyo and Urbetino Medina, the Claimants herein, were dismissed from service on December 2, 1987. Santoyo was charged with violation of Rule G "by having in your possession in your locker two cans of beer, and by consuming beer at lunch." Medina was charged with violation of Rule G "by testing positive on Alco-Sensor III and RBT-III [testing for alcohol] programmed printer and by consuming beer during your lunch period of December 1, 1987."

Rule G reads as follows:

"The use of alcoholic beverages by employees subject to duty or their possession or use while on duty or on Company property is prohibited.

Employees must not report for duty under the influence of any alcoholic beverage, or impaired to any degree by alcoholic beverages."

Rule 42 provides for employees who are suspended or dismissed the right to a "fair and impartial hearing" provided that written request is made within seven days of the discipline. Such request was made in timely fashion, leading eventually to consideration by the Board.

The Carrier's Police Department reported that it had received a telephone call that Track employees "were about to partake in the drinking of alcoholic beverages."

Two police officers went to the vicinity of the Labor Camp Building. They observed Claimant Medina go to his car, remove a brown paper bag and return to the Labor Camp Building. (The brown paper bag was later found in Medina's locker. The bag contained two ice-cold bottles of beer.)

The police officers entered the building and found cans of beer in the vicinity where the two Claimants were sitting. The Claimants were then directed to take a test to measure intoxication. Medina tested positive, while Santoyo tested negative. According to police testimony, both men admitted to having beer with their lunch.

Most of the evidence in this matter is circumstantial. Neither employee was observed drinking beer. As to "possession," this is limited to the discovery of the brown bag and the observation of cold beer cans within reach of the Claimants. The Board finds, nevertheless, that the Carrier logically determined that the Claimants had violated Rule G as to possession and use of alcoholic beverages while on the Carrier's property.

As to severity of discipline, the Carrier reviewed the disciplinary records of the Claimant. Medina had been dismissed from service twice and then reinstated on a leniency basis. One of these reinstatements was less than six months before the December 1, 1987 incident. Santoyo had also been dismissed twice before and returned to work on the basis of leniency.

With these records, the Board has no basis to question the Carrier's determination that dismissal is the appropriate penalty.

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 7th day of August 1990.