

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32150
Docket No. MW-31384
97-3-93-3-394**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborer Torchman E. Davis for alleged violation of General Rule 'G' on August 6, 1992 was arbitrary, extremely harsh and in violation of the Agreement.**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all benefits and seniority rights unimpaired, his record shall be cleared of the charges leveled against him and he 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The facts in this matter are not in dispute. The Claimant and his Foreman were each found to be possessing and presumptively drinking a can of beer while they were taking their lunch break together. During a subsequent Investigative Hearing, the Claimant admitted to this offense, clearly in violation of Rule G.

Following the Investigative Hearing, the Claimant was dismissed from service. The Foreman, however, was not dismissed but was permitted to undertake a rehabilitation program.

The Organization argued that the Claimant was the victim of disparate treatment (in comparison to the Foreman); had a good working record over 26 years; had admitted his improper conduct; was effectively condoned in his action by his Foreman; and was enrolled in a Veterans Administration rehabilitation program. On these bases, the Organization contends that the Claimant should be restored to his former position.

The parties have agreed to a Companion Agreement covering Rule G violations and providing conditions for violators to retain their employment upon successfully completing a proscribed program. As the Carrier points out, however, the Companion Agreement contains the following exceptions which bar an employee from participating. These exceptions are:

- “(1) The employee has no prior Rule G offense on his or her record, and
- (2) The employee has not previously participated in the Rule G R/E Program; and
- (3) The incident giving rise to the dismissal did not involve significant rule violations other than Rule G.”

In the matter here under review, the Foreman did not fall under any of these exceptions and thus was permitted to participate in the Program. On the other hand, the Claimant was dismissed from service on October 19, 1981 on a Rule G violation and was reinstated “on a leniency basis.” Thus, he falls under one of the exceptions. The Organization comments that the Companion Agreement was not in effect in 1981 and somehow that offense should not count. The Board notes the exception simply states “no prior Rule G offense” without qualification or limitation.

As to the presumed condonation by the Foreman, it remains the case that employees are individually responsible for adhering to known rules of conduct.

While it is not overlooked that the Claimant has 26 years' service, the fact remains that the Companion Agreement is itself a significant modification of a Rule G violation, allowing an employee the chance for rehabilitation after a first offense. The Board has no basis to interfere with the terms of the mutually agreed Companion Agreement. Further support for this view is the Claimant's record which includes (for other causes) another dismissal and reinstatement, as well as two 30-day suspensions.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 13th day of August 1997.