

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32771
Docket No. MW-32503
98-3-95-3-366**

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborer W. G. Roanhorse for alleged violation of Rule G, by being under the influence of alcohol while on Company property on January 19, 1994, was arbitrary, capricious, unwarranted and in violation of the Agreement (System File D-212/940436).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered beginning January 19, 1994 and continuing until he is returned to service."**

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 evidence in this case regarding the Claimant's alleged appearance for duty in an intoxicated state was developed at an ex parte Hearing held on February 10, 1994. The Investigative Hearing was "ex parte" as neither the Claimant nor his Organization representative was in attendance. The Notice of Investigation was received by the Claimant on February 1, 1994. At the Investigation the Carrier presented substantial and convincing evidence of the Claimant's "being under the influence" on January 19, 1994. Obviously, since the Claimant was not present at the Investigation, the evidence of his intoxication was un rebutted.

The essence of the Claimant's defense in this case is that he was led to believe, as the result of a telephone conversation between BMW Vice Chairman R. L. Cooper with Manager of Rail Relays Ron C. Callaway, that he would be given the opportunity to enroll in the Carrier's program for substance abuse rehabilitation.

It was on the basis of this alleged understanding that the Claimant did not appear at the Investigation on February 10, 1994.

The Organization has argued that Mr. Callaway "gave the indication he was willing to forego the holding of the Hearing and willing to offer the Claimant participation in the Carrier's Rule G Rehabilitation/Education Program."

The Carrier has pointed out in its Exhibit G, a memorandum from Mr. Callaway, that it was determined that the Claimant had previously participated in the "Rule G" program within the last three years, and thus he was not entitled to enroll in the program again. The Carrier has argued that once the Investigation was scheduled and the Claimant received specific and adequate notice of said Investigation that he was obligated to attend.

While the Carrier might have acted more judiciously had it granted a postponement when the Organization requested same on the date that the Hearing was scheduled, it is clear to this Board that (1) the evidence presented by the Carrier regarding the Claimant's being under the influence was overwhelming, (2) Mr.

Callaway did not commit to enrolling the Claimant in the Rule G Rehabilitation Program, (3) the Claimant had adequate notice of the Investigation and sufficient opportunity to request a timely postponement, which he did not, (4) the Claimant was not deprived of essential rights to Agreement due process and (5) the Claimant was not entitled by Agreement provisions to be reenrolled in the Rule G Rehabilitation Program.

Based upon these findings, the claim will be denied.

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 23rd day of September 1998.