

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carpenter J. R. Hewett be returned to service with seniority rights unimpaired and be allowed pay for all time that he has been improperly held out of service subsequent to April 27, 1947.

OPINION OF BOARD: J. R. Hewett, B & B Carpenter, was dismissed from service of the Carrier on April 21, 1947 for violation of the company's Rule G, regarding the use of intoxicants, and Rule "P" pertaining to absence from duty without permission. He denies both charges and claims that he was off duty because of injuries and sickness contracted in the Army.

No claim is made that either of the involved rules go beyond the authority possessed by the company under the current agreement or that its terms do not permit the discharge of an employee actually guilty of their violation.

Rule G, reads:

"The use of intoxicants by employes while on duty is prohibited. Their use or the frequenting of places where they are sold, is sufficient cause for dismissal."

Rule "P" so far as it has application to the facts provides:

"Employes must not absent themselves from duty nor provide a substitute without proper authority."

The primary question presented for decision by the record, it being conceded he was absent from his job on numerous occasions, is whether Hewett was off work because of over indulgence in alcoholics or on account of sickness.

This is fundamentally a fact case which can be determined solely upon that basis.

No useful purpose would be served by reviewing the evidence. It will suffice to say that notwithstanding the employe's story his absence from work was because of injuries and sickness contracted while in the army the record is replete with convincing evidence, supplied by fellow workmen, to the effect that he was intoxicated while on the job, that he was seen on the streets while absent from work in an intoxicated condition at a time when he was supposed to be ill at his home, and that on a number of occasions as

a result of his excessive use of intoxicants he was a hazard not only to himself but to others with whom he was working.

In our opinion the facts disclosed by the record are so clear and convincing as to preclude giving credence to the workman's uncorroborated statements as to why he was off work so frequently and compel the conclusion that his absence was due to the excessive use of intoxicants under conditions and circumstances constituting a violation of Rule "G".

In view of what has just been stated and held, there is no necessity for giving consideration to the question whether Rule "P" was violated.

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

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 evidence of record requires affirmation of the Carrier's action.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.