

Award No. 9863
Docket No. TE-11901

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier's dismissal of Kelly Fletcher, Towerman, CO Tower, Port Clinton, Ohio, on November 17, 1959, for the offense charged was harsh and unreasonable and in abuse of the Carrier's power of discipline.
2. The Carrier shall restore Kelly Fletcher to his regular position with all rights unimpaired in accordance with the provisions of Article 32 (f) of the parties' agreement.

OPINION OF BOARD: Claimant, a towerman assigned to work 11:15 P. M. to 7:55 A. M., was dismissed on October 29, 1959 for an alleged violation of Rule "G" which prohibits the use of intoxicants by employees subject to duty "or their possession or use while on duty".

That Claimant was in possession of an "alcoholic beverage" while on duty on October 29 is undisputed. It is also clear, in our opinion, that there was sufficient credible evidence for Carrier to find that the "alcoholic beverage" in question was an intoxicant within the meaning of Rule "G". Petitioner contends, however, that dismissal is an excessive penalty under the circumstances of this case.

The record establishes that Claimant was accorded a hearing that complied with the requirements of the applicable Agreement and awards of this Board. It also shows that the controlling facts are not in controversy. Claimant, while on duty at about 2:00 A. M. on October 29, reported having injured his leg and that he would see a doctor at the conclusion of his trick. The Trainmaster assigned to investigate the situation found him asleep on the office floor at about 2:38 A. M. and a small bottle of "alcoholic beverage" in his lunch basket. Claimant was released from duty shortly after 3:00 A. M.

There is no proof that Claimant had used intoxicants in violation of Rule "G" and Petitioner emphasizes both evidence that the bottle found by the Trainmaster was filled to the top and Claimant's explanation that his wife had put it in his lunchbox since they were going to the Marsh after work to build a duck blind and would need the drink for protection against the cold.

Petitioner also urges that only Claimant's violation of Rule "G" is now before us. We do not subscribe to that contention. In assessing discipline it is proper for the Carrier to consider the past record of the employe involved where, as in this case, reprimands or suspensions accompanied the violations and Claimant therefore had notice of the misconduct charged and an opportunity to defend himself. See Awards 9511, 9455, 8310 and 6171. While the mere possession of the bottle of "alcoholic beverage" might not in and of itself warrant Claimant's dismissal, that incident may be properly considered in the light of his service record as a whole, which shows four separate instances of sleeping on duty and other transgressions. The towerman's duties relate directly to safe and efficient railroad operations and we do not see how, on the basis of the record before us, we validly can overrule the disciplinary action decided upon by the Carrier charged with responsibility for those operations and direct reinstatement. See Awards 9422, 7072, 6012 and 5832.

The claim accordingly will be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of March, 1961.