

Award No. 15023
Docket No. MW-15810

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.**

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

(1) The Carrier violated the Agreement when, without just and sufficient cause and on the basis of unproven and disproven charges, it dismissed Section Foreman A. R. Golden and Section Laborer Juan Vega from service as of February 2, 1965.

(2) Messrs. A. R. Golden and Juan Vega be reinstated to their respective positions with seniority, vacation and all other rights unimpaired: their records cleared of the charges and they be compensated for wage loss suffered in accordance with the provisions of Rule 19, of the Agreement. (Carrier's File PR-D 214121).

NOTE: Transcripts of the investigations have been made by the duplicating process by the Carrier. Hence, the Employees will not submit the transcripts with our submission but we shall expect the Carrier to submit full and accurate copies thereof with its submission, as per last sentence of "INSTRUCTIONS FOR PREPARING SUBMISSIONS TO THE THIRD DIVISION . . ." dated December 18, 1958.

OPINION OF BOARD: This claim involves an alleged violation of Rule G, by Claimants, on Thursday, January 21, 1965. On that date the Claimants left the property and went to a restaurant for lunch. En route, Claimant Vega purchased a bottle of wine and gave it to his Foreman, Claimant Golden.

Golden drank some of the wine with his lunch. Vega did not partake.

Golden placed the bottle under the front seat of his automobile and returned to work. During the afternoon work period Agent Proctor took Golden to his automobile. There Agent Smith required Golden to unlock his car and surrender the bottle.

Claimants were charged, tried, committed and dismissed from service for a violation of Rule G.

There is no evidence in the record to support any charge against Claimant Vega. He did not consume or use intoxicants, nor did he have them in his possession while on duty.

There is no evidence in the record that Golden's off duty consumption of the wine impaired his ability to perform in the service of the Carrier. There is no evidence of intoxication to any apparent degree whatsoever. There is no

evidence of any unusual behavior by Golden, or that the Claimant's ability to perform his work was affected or impaired. In fact, Agent Proctor testified that he did not smell alcohol and that he did not consider Golden to be intoxicated.

We are mindful of the awards which support discipline for violations of Rule G even while Claimant is off duty. However, we believe that in order to sustain discipline in this type of case, there must be an affirmative showing that such consumption affected the employee's ability to perform in the service of the Carrier. It is not sufficient to base a violation of Rule G on off duty consumption per se. However, the degree of impairment is not essential, as we would not condone the performance of work by those under even the slightest alcoholic impairment. In the instant case, the record is conclusive, that Golden was not impaired in the slightest manner, and we do not believe that the off duty consumption burden has been met by the Carrier.

The fact that the bottle itself was ultimately removed from Golden's locked automobile, negates any argument that the Claimant had the intoxicant in his possession, while on duty.

We are of the opinion that the record is barren of any evidence to support a violation of Rule G in regard to either of the Claimants. Therefore, we hereby reverse the disciplinary action of the Carrier, exonerate the Claimants and direct that they be dealt with in accordance with Rule 19 of the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated.

Claim sustained.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1966.