

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21292
Docket Number MW-21470

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago and North Western Transportation Company

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

(1) The dismissal of Trackman F. J. Blada, Jr. for alleged "violation of Rule 'G'" was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File D-11-1-302).

(2) Claimant F. J. Blada, Jr. be accorded the benefits prescribed in Agreement Rule 19(d).

OPINION OF BOARD: Claimant was dismissed for alleged violation of Rule "G" after an investigation. He had six months service with Carrier.

The initial question before us is whether or not there was substantial evidence adduced at the investigation to support Carrier's conclusion that Claimant had violated the rule. An analysis of the record of the hearing indicates that there was testimony, un rebutted, that Claimant's breath smelled of alcohol and that the thermos jug, which he admittedly had been drinking from contained wine. There was in addition the evidence that the contents of the jug had been analyzed and found to contain "ethyl alcohol". Claimant, of course, denied that he had been drinking though admitting at the investigation that he had taken a drink out of the jug in question. The contradiction in the evidence relates to the contents of the thermos jug; the testimony of the two Carrier officers that it contained wine as against the report from the testing laboratory that it contained ethyl alcohol. Regardless of the apparent discrepancy, it is quite evident that the jug did contain an intoxicating beverage of some type and further that Claimant did drink from it, while on duty. We must conclude therefore that on a prima facie basis Carrier has established a violation of Rule "G". Petitioner's contention that there was no indication of how the thermos got on the property with the alcohol in it is not relevant to the basic issue of the dispute.

In the light of the implications of the particular rule violation and Claimant's short service with the Carrier, there is no basis for disturbing Carrier's penalty: it was not arbitrary or capricious.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.