

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22396
Docket Number SG-22418

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On June 17 and 21, 1977, the carrier violated the current Signalmen's Agreement, particularly rule 60 (revised) during the investigation of signal maintainer Mr. Chris Tousana, and subsequent discipline assessed to him.

(b) Carrier now be required to reinstate Mr. Tousana to his former signal maintainers position with all seniority and other rights unimpaired, compensate him for all time lost, and clear his personal record of the entire charge." Carrier file: D-9-17-257

OPINION OF BOARD: On June 13, 1977, Carrier notified the Claimant to report for investigation concerning an alleged violation of Rule G. Subsequent to the investigation, Claimant was dismissed from service.

Initially, the Claimant questions the sufficiency of the notice in that the charge merely asserted a violation of "Rule G" without further specifics as to the nature of the asserted violation or the time, place, etc. Certainly, we will concede that the notice was not ideal, and it should have been more specific in its terms. At the same time, under this record we are not able to state that the Claimant was not notified "...as to the nature thereof of charges against him, if any..." as required by Rule 60. We reach that conclusion because certainly an employe with over ten years of experience in the industry is aware of the general contents of "Rule G." Moreover, we note that he was held out of service on June 11, 1977 - a short time prior to the notice and investigation - and contrary to his assertions, he appeared to know the purpose of the hearing, and the basis for the accusation against him.

Further, we feel that there is substantive evidence of record to demonstrate that the Claimant was in violation of Rule G. The Claimant's tour of duty, on the date in question, started at 11:00 p.m. But, at 11:22 p.m., he was asleep in a chair with his head on the desk. While it is true that the Employe was not charged with being asleep while on duty, it is equally true that we may consider such evidence as it might tend to corroborate other evidence which suggested that the Employe had imbibed in alcoholic beverage prior to reporting to duty. The evidence shows that the Claimant was not properly dressed for duty, various noises and activity failed to awaken him, and there was an aroma of alcohol associated with him. Claimant refused a chemical test which was offered to him as a means of confirming his protestations that he had had only two beers some 10 or 11 hours prior to the confrontation. In addition, there is evidence of unsteady gait and slurred speech.

We have not discounted the evidence concerning the Claimant's ability to "pick up coins" and to identify and calculate their denominations. But, that evidence does not negate a finding that an Employe used alcoholic beverages while subject to duty.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1979.