

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22519  
Docket Number MS-22938

PARTIES TO DISPUTE: (Fred Garland  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on 4-13-79-~~Ma~~ April 13th 1979 covering an unadjusted dispute between me and ConRail involving the question:

Rule "G" drinking on the job!  
Causing termination. I should like an oral hearing.

OPINION OF BOARD: Petitioner entered service of the Carrier as a trackman on May 25, 1976. Petitioner was cited and hearing held January 5, 1977 on alleged charge of "Drinking alcoholic beverage while on duty on December 28, 1976 in violation of Safety Rule 3002 and Rule G of the Book of Rules for Conducting Transportation." On January 14, 1977, Petitioner's service with Carrier was terminated. Under date of March 14, 1979, Petitioner filed Notice of Intention to this Division of unresolved dispute between himself and Carrier involving the question: "Rule 'G' drinking on the job! Causing termination. I should like an oral hearing." Petitioner followed April 13, 1979 with letter to Division reiterating the question at issue set forth in his March 14, 1979 Notice of Intention to file submission on the unresolved dispute. However, Petitioner did not set forth facts relating to the dispute nor his position in defense of Carrier's action of terminating his service which resulted from hearing held January 5, 1977. Petitioner was afforded opportunity at hearing scheduled September 4, 1979 to make full answer orally or in writing to all matters covered in Carrier's submission. Petitioner did not appear nor submit written response.

The Division has reviewed and considered the record as submitted by the Parties and conclude testimony adduced at the hearing January 5, 1977 contained substantial evidence of Petitioner's conduct December 28, 1976 to support the charge of violation of Rule "G" and with consideration of prior discipline assessed Petitioner, termination was neither arbitrary nor unreasonable.

Carrier raised certain procedural objections; however, in view of our findings here, they need not be further discussed.

FINDINGS: The Third Division of the Adjustment Board, after giving the Parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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;

That hearing thereon has been held and concluded; 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 17th day of September 1979.