

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23028
Docket Number MW-23129

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman Jerry R. Fedele for alleged 'violation of possession and use of alcoholic beverages during your tour of duty on Tuesday, July 18, 1978' was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System Docket 374).

(2) Trackman Jerry R. Fedele be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant had been in Carrier's service as a trackman for about two years. On July 21, 1978, he was notified to attend a hearing and investigation on July 27, 1978, to answer charges in connection with:

"Alleged violation of possession and use of alcoholic beverages during your tour of duty on Tuesday, July 18, 1978, at approximately 3:15 - 3:30 PM."

The hearing was held as scheduled. The claimant was present throughout the hearing and was represented. A copy of the transcript of the hearing has been made a part of the record. On August 1, 1978, claimant was notified of his dismissal from service.

A review of the transcript of the investigation, including claimant's statement, shows substantial evidence that claimant was in possession of two bottles of beer, one of which had been opened, while on Company bus enroute from the work site of the gang to the headquarters location, during the time that claimant was still on duty and under pay. There were proper grounds for dismissal.

The record also shows that during the investigation a plea was made for leniency in behalf of claimant. Any plea for leniency addresses itself to the Carrier and not to this Board.

The record also shows that claimant had previously been dismissed for insubordination and later reinstated.

Considering claimant's short service with the Carrier, the Board does not find the discipline imposed to be arbitrary or excessive.

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. Paulos
Executive Secretary



Dated at Chicago, Illinois, this 28th day of October 1980.