

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23139
Docket Number MW-23286

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Terminal Railroad Association of St. Louis

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

(1) The dismissal of Track Laborer Freddie Williams for alleged violation of Rule G was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File TRRA 1979-17).

(2) Track Laborer Freddie Williams shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered beginning January 25, 1979."

OPINION OF BOARD: Prior to his dismissal from service, claimant was employed as a track laborer. The Carrier states that about 11:20 a.m., January 25, 1979, claimant was observed by a Patrolman in Carrier's Police Department leaving an establishment in East St. Louis, Illinois, known as Bonnie's Tavern, carrying a bag containing two bottles of liquor. The claimant was observed placing the bag in the rear of Company Truck No. 298. The Patrolman reported the incident to the Carrier's Assistant Chief Engineer, who went to the Front Street location, where claimant was working. Accompanied by a former Track Supervisor, the Carrier's Assistant Chief Engineer searched the truck involved and found the bag containing the two bottles of liquor and observed that the seals on the bottles had been broken. At that time the claimant admitted that the liquor belonged to him. Claimant was removed from service pending the outcome of a formal investigation. On January 26, 1979, claimant was notified by the Assistant Chief Engineer:

"You were suspended from the service at or about 11:30 A.M., Thursday, January 25, 1979, pending the outcome of a formal investigation (hearing) that will be held at 1:30 P.M., Thursday, February 1, 1979, in the Conference Room in building located at #137 East Bremen Ave., St. Louis, Missouri to determine the facts and your responsibility, if any, in connection with your alleged violation of Rule "G" of General Rules dated September 22, 1975.

"Arrange to be present. You are entitled to representation and witnesses in accordance with Rule #24 of the current Agreement between the Terminal Railroad and the Brotherhood of Maintenance of Way Employees."

On March 1, 1979, claimant was dismissed from service.

Rule "G" of Carrier's Book of Operating Rules reads:

"(g) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

X-1
The Board has carefully reviewed the transcript of the hearing, which has been made part of the record. The hearing was conducted in a fair and impartial manner. There was substantial evidence, including the statement of claimant, that claimant bought the two bottles of liquor and placed them on the Company Truck while on duty. He was, therefore, in violation of that portion of Rule "G" pertaining to "possession" of intoxicants while on duty. Discipline was warranted. However, there is no evidence that claimant consumed any of the liquor, or any evidence of intoxication. Considering claimant's nearly ten years of unblemished service, the Board finds that permanent dismissal was excessive. The time that claimant has been out of service should constitute sufficient discipline.

X-2
We will award that claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

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 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; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.