

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24503
Docket Number MW-24566

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Northeast Illinois Regional Commuter Railroad Corporation
((former Chicago, Rock Island & Pacific Railroad Company)

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

(1) The ninety (90) days of suspension imposed upon Laborer W. L. Robinson for alleged violation of Rule 'G' was arbitrary, capricious and on the basis of unproven charges (System File RTA-D-957/D-11-18-14).

(2) The claimant's record be cleared of the charge leveled against him he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Laborer, W. L. Robinson, was employed by the Carrier and assigned on October 10, 1980 to the "Tie Gang". He was working in the vicinity of 97th Street, Vincennes Avenue, Chicago, Illinois where an incident occurred leading to disciplinary action.

The Claimant, with other members of the "Tie Gang", left the Carrier's property to buy and eat lunch. They sat behind a grocery store where they were observed by a supervisor and a special agent. The Claimant had an unopened can of beer, "next to his right side, against his leg," which was confiscated.

After a proper hearing he was suspended for 90 days for violation of Rule G which reads, in part "Possession of Intoxicants . . . while on duty is prohibited".

The Employees contend that the Carrier has not met the required burden of proof with respect to "possession", that the claimant was not "on duty" at the time of the incident and that the denial by the hearing officer of the Claimant's right to cross examine witnesses amounted to a denial of a proper hearing, as required.

The Board finds to the contrary on all contentions.

With respect to possession of intoxicants, the Assistant Supervisor testified that the beer was next to the Claimant's right side against his leg. The Special Agent testified that the beer was "no more than an inch - 2 inches away", from the Claimant's leg. And the Claimant, himself, testified that the can was next to his leg. Although he asserted that the can belonged to "outsiders", neither of the Carrier's witnesses substantiate the presence of outsiders claiming the beer as their own and it is not for this Board to reconcile conflicting testimony nor to settle questions of veracity. Based upon this testimony the Hearing Officer concluded that there was probative, substantial evidence of "possession" in which the Board concurs.

While the Claimant was not on company property and on his lunch break when the incident occurred he must be considered in a "duty" status and subject to the rules with respect to such status. Thus, the Claimant was not immune to the consequences of his actions.

In regard to the assertion that Claimant was denied a fair trial by the Hearing Officer since he was not permitted, personally, to cross-examine witnesses, it is in the procedural regulations to permit the Claimant to be represented and to restrict questioning to such representative(s). The Claimant was represented by two (2) Organization Officers who cross-examined witnesses on behalf of the Claimant. Thus, he was afforded a fair hearing and admitted as much in his testimony. Nevertheless, while the Claimant was properly disciplined for this infraction, ninety (90) days suspension seems unduly harsh, particularly since he had a prior unblemished record. Accordingly the suspension is reduced to thirty (30) days.

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

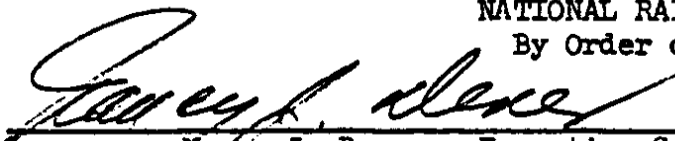
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.

