

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24842  
Docket Number MW-2466

Robert W. McAllister Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Burlington Northern Inc. (former St. Louis-San Francisco  
( Railway Company)

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

(1) The discipline imposed upon Machine Operator W. J. Holloway for alleged violation of 'Rules G and 189' was without just and sufficient cause and on the basis of unproven charges (System File B-1913/MWC 81-6-24A).

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

OPINION OF BOARD: At the time of his dismissal, the Claimant, W. J. Holloway, was a machine operator on Tie Gang T-1 10 with approximately three and one-half years of service. On January 10, 1981, the Claimant did not report for work and, after a discussion, that morning with the Assistant Roadmaster in the bunk car, Claimant was dismissed from service for violation of Rules G and 189. Subsequently, the Carrier returned Claimant to service effective February 17, 1981. The Organization contends the discipline imposed was without just cause.

The record establishes that, on January 10, the Claimant did not report to work. Assistant Roadmaster Gunn testified he could see the Claimant asleep in the bunk car at around 10:00 A.M. Gunn further testified he concluded Claimant was drunk from his speech and the smell of alcohol. The Organization disputes this testimony and argues the transcript clearly established the Claimant was unable to report for work because he was ill with a flu virus.

It is acknowledged the Claimant did not see Dr. Demas until January 12, 1981. Notwithstanding the claim of illness, Dr. Demas' medical slip is devoid of any information which might support Claimant's assertion. This slip fails to identify Claimant's illness nor does it state if the Claimant's absence of January 10 was linked to or the same medical problem (as yet unidentified) diagnosed by Dr. Demas on January 12.

This Board is satisfied the evidence adduced is sufficient to support the discipline imposed. The Carrier's prime witness observed the Claimant's condition, and there is no basis for not giving such testimony its full weight. The proffered excuse of illness is not supported by the evidence, and the Claimant's absence from work is uncontroverted.

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

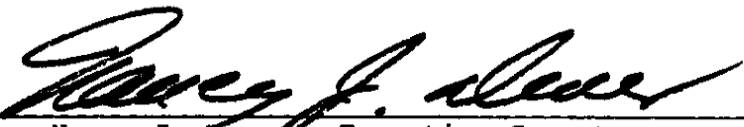
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Leves - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1984