

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24941
Docket Number MS-25057

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (W. D. Devine
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(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(S.D. CR-0142-D) that:

(a) The Carrier violated the Rules Agreement effective February 1, 1968, as amended by the Interim Rules effective January 26, 1976, particularly Rule E-1, when it assessed discipline of dismissal on W. D. Devine, Crew and Engine Dispatcher, Jackson, Michigan.

(b) Claimant Devine's record be cleared of the charges brought against him on November 21, 1980.

(c) Claimant Devine be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained in accordance with the provisions of Rule F-1(e). Claimant also to be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers Group Policy GA-23000."

OPINION OF BOARD: Claimant was employed as a Crew Caller with approximately thirteen years of service with the Carrier at the time of his dismissal. The record indicates that on November 20, 1980 Patrolman M. R. Jackson, Conrail Police Department observed Claimant in Car 4 between the F. P. Miller building and the roundhouse area. According to Patrolman Jackson, the claimant appeared intoxicated and was given a sobriety test, which he failed.

The Carrier removed Claimant from service pending an investigation. It was held on December 8 and 12, 1980 in connection with the following charge:

"Your violation of Rule 2028 of the Conrail Safety Rules for Station Employees in that you were under the influence of intoxicants while on duty as Crew Caller, assignment #TR-10, from 3:00 PM to 11:00PM on Thursday November 20, 1980 at Jackson, Michigan."

Several witnesses testified on the Claimant's behalf. W. F. Ward testified as follows:

"Q. You stated that you had some conversation between the hours of 9:00 PM and 11:00 PM with Mr. Devine, is that correct?

A. Yes sir."

Mrs. McAlpine, Claimant's relief testified as follows:

"Q. Mrs. McAlpine, can you say for the record, that during the meeting you had with Mr. Devine, as to whether or not he was or was not under the influence of intoxicants?

A. There was no indication at all - no.

Q. In the conversation you had with Mr. Devine, did he appear normal?

A. He appeared normal to me."

The entire record has been reviewed. It establishes that Patrolman Jackson personally observed the Claimant. He "detected a very strong odor of alcoholic beverage emanating from Mr. Devine." After observing the Claimant for two hours to confirm his suspicion and noting his condition worsened, the officer then gave the Claimant a sobriety test, which the Claimant failed.

As a Patrolman, Officer Jackson was in a position to make a reasoned judgment as to Claimant's intoxication on the evening of November 12, 1980. Moreover, the Carrier was free to credit Patrolman Jackson's testimony over other witnesses who indicated that the Claimant did not appear inebriated. Thus the record establishes with a sufficient degree of reliable evidence, the Claimant's guilt of the charges specified.

The use of intoxicants while on the job is a serious offense. As was noted in First Division Award 20442:

"It is generally recognized that a violation of Operating Rule G which prohibits the use of intoxicants or narcotics by employees subject to duty is proper cause for dismissal."

This is particularly true here since Claimant's past disciplinary record indicates a prior dismissal for being under the influence of intoxicants while on duty. He had only been reinstated to duty on August 22, 1978. Accordingly, under these circumstances, the Carrier's decision to dismiss the Claimant will be sustained.

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 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

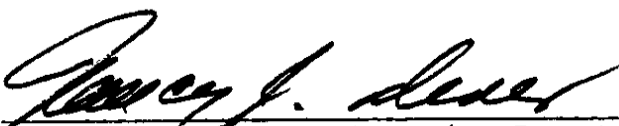
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

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