

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25842
Docket Number MW-26101

John W. Gaines, 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 Machine Operator E. C. McDonald, Jr. for violation of Rule 'G' was excessive (System Docket CR-251-D/ENMW 15/83).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant's violation of Rule "G" is supported and admitted of record.

The Rule provides:

"G. The use of intoxicants, narcotics, amphetamines or hallucinogens by employees subject to duty, or their possession or use while on duty, is prohibited."

The sole issue turns on the severity of discipline by dismissal.

Carrier submits that Claimant was witnessed drinking from one of his bottles of iced-down beer while on duty and that the witness found the bottle cap discarded from the opened and partly consumed beer. Claimant testified that, upon being observed with the beer bottle, he threw it in the bushes.

Carrier had warned Claimant on a previous occasion of violations in the use of alcohol. His record shows he had admitted to two prior charges, and at the time of the instant occurrence, Claimant was working under a conditional return to duty.

Leniency toward this latest violation is a Carrier prerogative; however, the full penalty of dismissal is not excessive. We deem it reasonable and will deny the Claim.

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

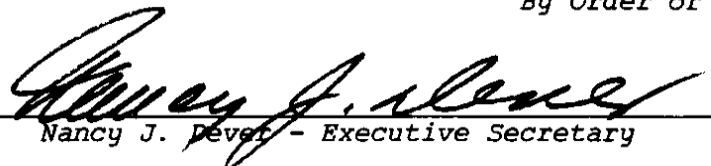
That the Agreement was not violated

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1986.

