

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26696
Docket Number MS-27073

Ronald L. Miller, Referee

(Henry Jones

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"I have been wrongly dismissed for violation of Rule G."

OPINION OF BOARD: As a threshold issue, the Carrier contends that the Claimant did not file his appeal to this Board in a timely manner, as specified by Rule 35 of the applicable Agreement. That Rule requires that proceedings be instituted before the appropriate Division of the National Railroad Adjustment Board within nine (9) months from the date of the decision of the highest Carrier Officer designated to handle disputes. That decision was rendered on February 20, 1985. Therefore, the Claimant's notice to the Executive Secretary dated May 30, 1986, is beyond the nine month period specified in Rule 35. Given the Rule and the facts of this case, the Claim must be dismissed due to late filing.

Even though the Claim is dismissed for procedural reasons, the charge of a Rule G violation should be addressed. On September 6, 1984, the Claimant was employed as a General Clerk in the mail room of Carrier's corporate headquarters. At approximately 12:07 P.M. Carrier Officers observed the Claimant drinking from a can wrapped in a paper bag. Upon being confronted by those Officers, the Claimant attempted to throw away the bag and its contents. The bag was kept in view until it was recovered and a can of malt liquor was found in the bag.

Rule G reads as follows:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on company property is prohibited."

During his lunch period, Claimant was "... subject to duty ..." as specified in Rule G. More than substantial evidence was adduced at the Hearing to establish that the Claimant was consuming an alcoholic beverage during his lunch period. Therefore, the consumption of that alcoholic beverage is a clear violation of Rule G.

This incident occurred approximately two weeks after the Claimant's reinstatement to service (without back pay) in another disciplinary matter. Given the Claimant's past record, there is no basis for mitigating the discipline.

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

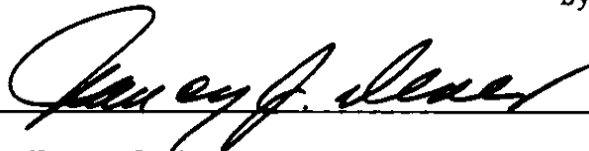
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.