

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26706
Docket Number TD-27368

Ronald L. Miller, Referee

PARTIES TO DISPUTE; (American Train Dispatchers Association
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Appeal of the dismissal of Train Dispatcher Ms. P. M. McClintock on April 18, 1985. Carrier file 82-85-5D"

OPINION OF BOARD: On Saturday, April 13, 1985, the Claimant was employed as a Train Dispatcher. At approximately 3:15 P.M., during her duty hours, the Claimant went to her car, removed a six-pack of beer and was walking to place the beer in the office refrigerator when she was stopped by the Relief Chief Train Dispatcher. The Claimant stated that it was her intent to cool the beer for a party that evening. She was told by the Chief that she was in violation of Rule G. The Claimant returned the beer to her car. The next day, April 14, 1985, the Claimant was removed from service. The Organization's initial appeal of May 17, 1985, was based on a request for reinstatement on a leniency basis. Following discussions with the Carrier, on November 12, 1985, the Organization amended its appeal by eliminating its request for leniency and substituting excessive discipline as the basis for its appeal. Subsequently, on May 5, 1986, the Carrier proposed to reinstate the Claimant on a leniency basis (the proposal also included a reduction in classification with possible reassignment to Train Dispatcher at a later date). The Organization did not accept the Carrier's proposal.

Leniency is clearly the purview of the Carrier and not this Board. On the other hand, the correction of excessive and/or unreasonable discipline is properly a function of this Board (see Third Division Awards 10790 and 20554). Therefore, the Carrier must establish that the discipline applied is reasonably related to the gravity of the offense. The Carrier is correct in asserting that a violation of Rule G is a serious offense. However, dismissal is not automatic where a Rule G violation occurs. Fairness and reasonableness in the application of discipline requires that the circumstances of the violation and the employee's past record also be considered. Upon a review of all relevant factors, the discipline of dismissal is found to be excessive.

The Claimant is to be reinstated to employment as a Train Dispatcher without backpay, but with her service rights restored.

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

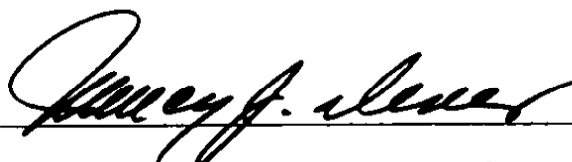
That the discipline was excessive.

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 23rd day of November 1987.