

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Laborer Driver J. L. Gant for alleged violation of Rule 'G' when he allegedly failed an alcohol screening test on March 17, 1988, was without just and sufficient cause, on the basis of unproven charges and arbitrary. (System File MW-88-43-CB/471-29-A).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated with all rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant had been a Laborer-Driver with Carrier prior to his dismissal. Claimant had been dismissed by Carrier in February 1985, for violation of Rule G and was reinstated in June 1985. He was again dismissed for failure to abstain from alcohol in September 1985. He was conditionally reinstated on January 15, 1987, having agreed to the following terms for reinstatement:

- "1) You must totally abstain from alcohol and other drugs.
- 2) You must participate in a rehabilitation program as agreed to with the Employee Assistance Counselor, and attend AA and/or DA meetings as prescribed and furnish verification of attendance.
- 3) You will submit to random unannounced alcohol and/or drug tests.
- 4) You must refrain from failing to protect your assignment and failure to report for duty must be substantiated and verified.

All of the above conditions will remain in effect for a period of not less than 2 (two) years and any violation of any condition may result in the termination of your employment."

Claimant was sent for an unannounced alcohol and drug test on March 17, 1988, and the test was returned positive for alcohol (.09%). He was subsequently cited for possible violation of Rule G and the Investigation was held on April 21, 1988. Subsequently, he was found to be guilty of the charges and was dismissed by letter of April 28, 1988.

The Organization relies on a number of factors to support its position that Claimant should not have been dismissed. First, it is urged that the confirmatory test used by Carrier, following the routine urinalysis, was illegible (as submitted at the investigatory hearing). Thus, the document should not be considered, according to the Organization. Further it is noted that Carrier did not produce any witnesses who observed Claimant on the date of the test to indicate that he exhibited any of the symptoms which would establish that he had been consuming alcohol. The Organization argues that any minor indication of the presence of alcohol in Claimant's system is attributable to his consumption of Geritol, a dietary supplement, which contains 12% alcohol.

Carrier maintains that it acted appropriately in its decision to terminate the Claimant. The level of alcohol found in his blood as a result of the test was near the legal threshold of intoxication at the time he reported to work. Carrier's medical department stated that this level of alcohol could not have been caused by the usual dose of Geritol. In fact, according to Carrier, he would have had to consume more than 240 tablespoons of Geritol the night before to reach the alcohol level of .09%. Carrier states that in view of Claimant's prior record it had no choice but to terminate him.

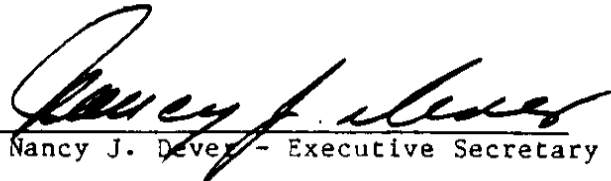
A study of the handling of this dispute on the property reveals that Carrier officials were lax in the processing of the problem. The documentation is not totally satisfactory as the Organization correctly states. Nevertheless, Claimant was accorded a fair Investigation, he was not deprived of any rights. He was properly found guilty, as the record reveals, of having consumed alcohol prior to reporting for duty. His excuse (concerning the ingesting of Geritol) is not persuasive. In addition, particularly in view of the earlier conditional reinstatement, Carrier was not required to produce any witnesses to supplement its "random testing." The Claim must be denied.

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 28th day of February 1991.