

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28714  
Docket No. MW-29111  
91-3-89-3-552

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Elgin, Joliet & Eastern Railway Company

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

(1) The dismissal of Garage Serviceman J. R. Romero for alleged violation of Rule C on October 21, 1988 was arbitrary, capricious, based on unproven charges and in violation of the Agreement (System File DJ-2-89/UM-8-89).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be made whole for all wage loss suffered with proper credits for benefits accruing therefrom."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

At the time of the incident that gave rise to this dispute, Claimant was employed by Carrier as a Garage Serviceman at Joliet Track Yard in Joliet, Illinois. On October 21, 1988, shortly after Claimant reported to work, he was observed having difficulty changing a tire. Fellow employees smelled alcohol on his breath. He was asked by a Supervisor to submit to a breath alcohol test. The results of the test indicated that Claimant had alcohol in his blood.

On November 7, 1988, Claimant was charged as follows:

"at about 3:30 p.m., October 21, 1988, when on duty as Garage Serviceman you were found in a condition

that would adversely affect the performance of your duties in violation of Rule G of the Safety Rules and General Regulations Governing Maintenance of Way Employees."

A Hearing in the matter was held on November 14, 1988. As a result of that Hearing, Claimant was found guilty of a Rule G violation and was dismissed from Carrier's service.

Rule G

"The use of intoxicants, narcotics or dangerous drugs by employees subject to duty, while on duty, while on Company property or on the property of others where employees of this Company work, is prohibited. Possession of intoxicants, narcotics or dangerous drugs or participation in any transaction involving same while on duty, on Company property or on the property of others where employees of this Company work, is prohibited."

This Board has reviewed the transcript of the Hearing, as well as the other pertinent facts of this case. The Board concludes from this review that Claimant was granted all procedural and substantive rights guaranteed by Agreement and that he was guilty of using alcohol while subject to duty, a Rule G violation.

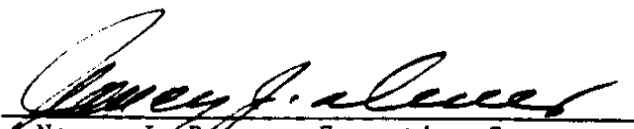
In light of Claimant's long years of service and his relatively clear record, however, this Board concludes that time held out of service is a sufficient penalty in this instance. The Board therefore directs that Claimant be returned to work on a last-chance basis with seniority, but without pay for lost time or benefits. Claimant should be on notice that he will be required to stay drug and alcohol free while subject to duty or while on duty. He will also be required to check in upon his return to duty with the local EAP Counselor. Claimant will be required to follow whatever program the EAP Counselor outlines for him.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.