

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29445
Docket No. MW-30146
92-3-91-3-588

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

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

(1) The dismissal of Laborer P. Smith in connection with the charges that, '... at approximately 11:00 A.M. on September 6, 1990, at La Grande, Oregon, you were found on Company property allegedly under the influence of alcohol indicating a possible violation of General Notice, Rules A, B, D, G, 4000, and 4001....' was arbitrary, capricious, without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File D-150/910167).

(2) The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered as a result of his being withheld from service pending hearing and the unjustified dismissal."

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.

Following an Investigation, Claimant was dismissed from service effective October 10, 1990, for violating Rule G by being under the influence of alcohol while on company property. According to the record of the Investigation, this incident occurred on September 6, 1990, while Claimant was attending a safety barbeque outside the depot at LaGrande, Oregon. According to the System Track Supervisor, there was an odor of alcohol on Claimant's breath, he slurred his words, and was argumentative and stumbling. When asked, at the Investigation, if he was under the influence of alcohol, Claimant replied, "I wasn't -- probably a little bit, not -- not that bad."

The Organization, in addition to asserting Carrier failed to prove its charge, has raised several procedural objections. First, it asserts Claimant was improperly removed from service prior to the Investigation. Carrier's right to do so, however, is recognized by Rule 48(o), which provides, in part, as follows:

"It is understood that nothing contained in this rule will prevent the supervisory officer from suspending an employe from service pending hearing where serious and/or flagrant violations of Company rules or instructions are apparent, . . . "

Certainly, Rule G violations are serious and are within the scope of this Rule. The Organization also argues Claimant was denied Agreement due process because the Hearing Officer made Claimant's prior record part of the transcript and because the decision to discipline Claimant was made by someone other than the Hearing Officer. Neither of these actions is prohibited by the Agreement. The Organization, therefore, must show how each deprived Claimant of a fair and impartial Investigation. Based upon our review of the record, we cannot find this to be the case.

The Organization's final objection is that Carrier violated its own policy by relying upon the observation of only one Carrier official. The policy cited, we note, requires two officials to observe an employee before directing testing for drugs under reasonable suspicion circumstances. That policy is not applicable herein because Claimant was not tested and drugs were not suspected.

Finding no procedural errors, we also find no basis for overturning Carrier's determination Claimant was in violation of Rule G. Claimant's record shows he was previously dismissed for Rule G in June 1987. Under the circumstances, the discipline imposed was not excessive.

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 21st day of October 1992.