

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30556
Docket No. CL-31093
94-3-93-3-125

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Chicago Short Line Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10934) that:

1. Carrier violated the agreement when, following an investigation held on April 28, 1992, it dismissed Mr. Gary Putnam from service effective May 12, 1992.
2. Carrier shall now restore Mr. Putnam to serviced with his seniority and all other rights unimpaired, shall compensate him for all time lost and shall clear his record of the charge placed against him."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was employed by the Carrier as a Yard Clerk. At the time of his dismissal on May 12, 1992, he had approximately 18 years of service. Claimant is an alcoholic. He had previously been dismissed for violating Rule G, but had been reinstated on a leniency basis in 1986. Claimant's reinstatement at that time had been on a "last chance" basis. He was advised that future violations would result in his dismissal.

The facts which led to Claimant's dismissal are not disputed. On March 18, 1992, while Claimant was in service, he was observed

by a Carrier supervisor drinking from a bottle of malt liquor while seated in his automobile. He was confronted and taken to the office of the General Manager. Claimant admitted his conduct; the General Manager informed Claimant that he would have to "take the consequences" of his action. Claimant denied being intoxicated; and it appears that he had consumed only a small amount of alcohol when discovered.

Claimant had experienced attendance problems in the two years preceding his dismissal. He had not heeded the Carrier's suggestions that he obtain assistance from the EAP. Following Claimant's discovery and confrontation, he obtained additional in-patient treatment for his alcoholism.

The Carrier convened a Hearing concerning Claimant's possible violation of Rule G. In that Hearing, Claimant acknowledged his drinking. Over the Organization's objections, the Carrier introduced Claimant's prior disciplinary record for purposes of evaluating the appropriate penalty. Following the Hearing, the Carrier dismissed Claimant for the violation.

Rule G provides:

"The use of intoxicants ... by an employee subject to duty or the use or possession of [intoxicants] by an employee on duty, on Company property ... is prohibited. The presence of alcohol in the blood at any level shall be deemed a violation of this rule. Employees ... are required to consent to breath ... testing ... Where there is evidence of violation of this rule, the employee will promptly be removed from service."

The Organization argues that the Carrier's action must be overturned because the General Manager prejudged Claimant's guilt, thereby depriving him of a fair and impartial hearing. It also argues that Claimant suffers from the illness of alcoholism and that he has obtained further treatment for his condition. The Organization protests the Carrier's consideration of Claimant's prior disciplinary record as prejudicial. It urges that the penalty of dismissal was, therefore, arbitrary and excessive. The Organization urges, therefore, that the Claim be sustained.

The Carrier argues that the record clearly establishes Claimant's violation of Rule G. It points out that Claimant had earlier been dismissed for such a violation and had been reinstated on a leniency basis. It points out, in addition, that Claimant had refused the Carrier's suggestions that he consult the Employee Assistance Program for attendance problems which preceded his dismissal and that he obtained treatment only after being dismissed. With respect to the procedural objections raised by the

Organization, the Carrier points out that the General Manager did not witness Claimant's drinking or appear as a witness and that he based his determination on the record of hearing. The Carrier points out that Claimant's record was used for the purpose of assessing the penalty; it asserts that such use is allowed. The Carrier urges, therefore, that Claimant's dismissal stand and that the claim be denied.

The record clearly establishes Claimant's violation of Rule G: he admitted drinking alcohol while on duty and on Carrier property. The facts do not establish Claimant's intoxication; however, intoxication is not required to establish a violation of Rule G. Further, we note that Claimant's drinking was interrupted only when he was confronted by the supervisor who observed him.

The seriousness of Rule G violations are well-recognized in the industry. On-duty use of alcohol by employees represents a significant threat to the safety of employees and others and increases the risk of damage to equipment and interference with operational efficiency. The Carrier is entitled to take action to ensure that employees work free from the influence of alcohol.

The record further establishes Claimant's alcoholism, which is well-recognized to be a treatable illness. Employers may be required to afford alcoholic employees opportunity to obtain treatment and rehabilitation. Indeed, the record indicates that the Carrier did afford Claimant such opportunity after he previously violated Rule G. However, Claimant shares responsibility to control his condition; and he accepted reinstatement by the Carrier following his Rule G dismissal on a "last chance" basis. In connection with the Rule G violation here at issue, Claimant failed to obtain assistance from the EAP prior to his dismissal and only sought additional treatment after he was discovered and confronted. It cannot be said that the Carrier failed in its responsibilities to Claimant or that he satisfied his responsibilities.

Of the Organization's argument that the General Manager improperly prejudged Claimant's guilt, we are not persuaded. The General Manager did not witness the incident or participate in the hearing; and he had available for his decision the results of the Investigation, including Claimant's admission that he had consumed alcohol on duty and on Company property. That the record duplicated Claimant's earlier admission in his office does not constitute harmful error. The General Manager's general statement that Claimant must "accept the consequences of his actions" is not, under the circumstances, sufficiently specific to constitute improper prejudgment.

Of the Organization's further argument that the Carrier improperly received and considered Claimant's disciplinary record

we are also unpersuaded. It is well-established in the industry that an employee's prior disciplinary record may be received and considered for purposes of evaluating the appropriate penalty. That is particularly appropriate where, as in this case, Claimant had previously been dismissed for violation of the same Rule and reinstated on a "last chance" basis. There is no indication that the prior disciplinary record was used to establish Claimant's guilt of the violation at issue; and we note, in any event, that he admitted the violation.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 9th day of November 1994.