

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31914
Docket No. MW-32298
97-3-95-3-128**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Head Welder E. E. Jefferies for alleged violation of Rule G on Friday, May 14, 1993 was arbitrary, unreasonable and in violation of the Agreement (System File S-P-504-L/MWB 93-10-14C).**
- (2) As a consequence of the above-referenced violation, Claimant E. E. Jefferies shall be reinstated to service with seniority and all other rights and benefits unimpaired. His record shall also be cleared of the charges 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 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 were given due notice of hearing thereon.

While attending welder training classes on May 3 through 14, 1993, the Claimant was observed carrying an opened can of beer on his way to the airport after the conclusion of his training session. Carrier charged the Claimant with a Rule G violation and notified him to attend an investigation to determine his responsibility, if any, in connection with his Rule G violation. The Carrier found the Claimant guilty as charged and effective June 2, 1993, the Claimant was dismissed from the Carrier's service.

The Organization appealed the dismissal and the appeal was denied.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was in violation of Rule G on Friday, May 14, 1993, when he was carrying a can of beer and had consumed other beer while still traveling from the Training Center. The Claimant admitted that he had a can of beer in his possession when he was returning from the Training Center. This Board finds that he was still acting on behalf of the Carrier and was still on the clock at the time of incident.

The general rules and information relating to the training program states in bold type, "Remember that you are on duty not only while you are in class, but also while you are traveling to and from the Training Center." That statement is made in the Rule G section which prohibits the use or possession of alcoholic beverages. There is no question that the Claimant was properly found guilty of being in violation of Rule G in this case.

This Claimant is a second-time offender. He had been previously found guilty of Rule G in 1988 and was placed into the Carrier's program. There was a Rule G Waiver and the Claimant was put on a ten-year program in which he was to stay away from drugs and alcohol. The Carrier's program states that an investigation should always be held on a second Rule G violation and if the Rule G violation has been established, the employee will be dismissed. There is an exception that if an employee has more than one year of service and has not violated Rule G within the past ten years, he will be given an opportunity to seek reinstatement through the Carrier's EAP. However, in this case,

the Claimant had already been found guilty of a Rule G violation within the past ten years and had previously obtained reinstatement through the Carrier's EAP.

Consequently, by this violation, the Claimant subjected himself to discharge.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Given the previous Rule G violation on the part of this Claimant and his admitted guilt of this violation, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

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 4th day of March 1997.