

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42586
Docket No. MW-42504
17-3-NRAB-00003-140135**

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed by letter dated May 13, 2013 upon Mr. N. Feugill for alleged violation of Safety Rules PGR-A, PGR-C, PGR-D, PGR-G, PGR-J, PGR-L (para 1) & Negligence in the performance of duties in connection with allegations that ‘. . . on Friday March 15, 2013 at approximately 2:20pm, you were allegedly observed at the Grand Buffet Restaurant, 350 Amherst St, Nashua, NH consuming alcohol ***’ was excessive, unwarranted, without just cause, on the basis of unproven charges and in violation of the Agreement (Carrier’s File MW-13-08).**
- (2) The discipline (dismissal) imposed by letter dated May 13, 2013 upon Mr. C. Fasulo for alleged violation of Safety Rules PGR-A, PGR-C, PGR-D, PGR-G, PGR-J, PGR-L (para 1) & Negligence in the performance of duties in connection with allegations that ‘. . . on Friday March 15, 2013 at approximately 2:20pm, you were allegedly observed at the Grand Buffet Restaurant, 350 Amherst St, Nashua, NH consuming alcohol.***’ was excessive, unwarranted, without just cause, on the basis of unproven charges and in violation of the Agreement.**
- (3) The discipline (dismissal) imposed by letter dated May 13, 2013 upon Mr. R. Libby for alleged violation of Safety Rules PGR-A, PGR-C, PGR-D, PGR-G, PGR-J, PGR-L (para 1) & Negligence in the performance of duties in connection with allegations that ‘. . .**

on Friday March 15, 2013 at approximately 2:20pm, you were allegedly observed at the Grand Buffet Restaurant, 350 Amherst St, Nashua, NH with fellow employees who were consuming alcoholic beverages. ***' was excessive, unwarranted, without just cause, on the basis of unproven charges and in violation of the Agreement.

- (4) As a consequence of the violation referred to in Part (1) above, Mr. N. Feugill shall be returned to service with his seniority unimpaired, have his record cleared of the charges leveled against him and he shall be provided all other rights and benefits granted by Article 26.
- (5) As a consequence of the violation referred to in Part (2) above, Mr. C. Fasulo shall be returned to service with his seniority unimpaired, have his record cleared of the charges leveled against him and he shall be provided all other rights and benefits granted by Article 26.
- (6) As a consequence of the violation referred to in Part (3) above, Mr. R. Libby shall be returned to service with his seniority unimpaired, have his record cleared of the charges leveled against him and he shall be provided all other rights and benefits granted by Article 26.””

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.

The Board finds the Organization's procedural objections unpersuasive.

Claimant Fasulo

The Carrier has proven by substantial evidence that Claimant Fasulo consumed alcohol (Miller Lite beer) while on Company time, as charged. The record contains a clear photograph of the Claimant holding a bottle of Miller Lite beer. This, and the other probative evidence in the record (including time sheets, Form D and testimony), establish Claimant Fasulo's culpability for a Rule G violation.

Claimant Feugill

The Carrier has not proven by substantial evidence that Claimant Feugill consumed alcohol while on Company time. There are unclear photographs of Claimant Feugill which may show him drinking from a container. If so, neither the container nor its contents can be discerned from the photographs. There is insufficient probative evidence in the record to establish Claimant Feugill's culpability for a Rule G violation.

Claimant Libby

Claimant Libby was not charged with consumption of alcohol.

Both Claimants Feugill and Libby have been proven by substantial evidence to have violated Rule C. The way in which this investigation came about from a complaint by a member of the public demonstrates same. The claimants were identifiable as employees of the Carrier. After being observed sitting at a table with other Carrier employee(s) who were consuming alcohol during their daytime work hours, they were observed entering into and then driving off in a work vehicle clearly marked and identifiable as a Carrier work vehicle.

It is undisputed that this Carrier has a long-standing, well-known, zero-tolerance, no-second-chance policy for Rule G violations. The Carrier has submitted several on-property Awards establishing same. The Carrier correctly urges the Board that in such instance, the Board should not substitute its judgment for that of the Carrier – even in the case of long-term employees with good records, as is the case with these Claimants.

Therefore, under the facts and circumstances of this record as they pertain to Claimant Fasulo, the Board finds that the discipline assessed by the Carrier was neither excessive, unwarranted, without just cause, on the basis of unproven charges nor in violation of the Agreement.

Under the facts and circumstances of this record as they pertain to Claimants Feugill and Libby, the Board finds that the discipline assessed by the Carrier was excessive, because neither of these Claimants violated Rule G. Claimants Feugill and Libby did knowingly and willfully violate Rule C. Rule C is also a serious violation, but the Carrier's strict Rule G policy does not apply to Rule C. Therefore, the Board finds the appropriate penalty for Claimants Feugill and Libby is that they be returned to work with no backpay, but with seniority intact.

AWARD

Claimant Fasulo: Claim denied.

Claimants Feugill and Libby: Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 19th day of April 2017.