PUBLIC LAW BOARD 5048

AWARD NO. 1
CASE NO. 1

PARTIES TO DISPUTE

CARRIER
NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION
(NIRC/METRA)

AND

ORGANIZATION
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS (IBEW)
SYSTEM COUNCIL NO. 10

CARRIER'S FILE NO.
05-15-30 M/E

ORGANIZATION'S FILE NO.
MF 4-90-15 METRA
4-794-89

STATEMENT OF CLAIM

"1. That Metropolitan Rail violated provisions of the current agreement, when it unjustly and unfairly terminated Electrician William Tabor from the service of the company, effective April 28, 1989.

"2. That Mr. Tabor be returned to service with seniority, and all applicable rights and benefits unimpaired; and, that he be made whole for all wage loss incurred during the period commencing April 11, 1989, and continuing until the date reinstated.

"3. That Mr. Tabor was not afforded a fair and impartial hearing, as the Hearing Officer failed to develop and pursue pertinent facts in connection with the charges under investigation; and, in fact, injected into the hearing the unsupported issue that there was something 'wrong' with Mr. Tabor during the April 11th occurrences.

STATEMENT OF BACKGROUND

Prior to his dismissal from service effective April 28, 1989, William Tabor, hereinafter Claimant, was employed as an Electrician by METRA/ELECTRIC and was headquartered at Richton Park Yard, regularly assigned to work Tuesday through Saturday with

hours of Midnight to 8:00 a.m. 1/ Claimant held seniority rights in the 18th Street/M.U. Shop Electrical Workers Seniority Roster.

On day and date of Tuesday, April 11, 1989, Car Foreman, Jessie Thomas, was working as vacation relief car foreman beginning his duties at Richton Park Yard. According to Thomas, the only time he works at Richton Park is when he performs vacation relief and, at most, this occurs twice a year. At the time Claimant reported to work for his tour of duty beginning 12:00 Midnight, Thomas was on the telephone in the Richton shanty, getting information on bad order cars. 2/ While on the telephone, Claimant entered the shanty along with other employees and clocked in. According to Thomas, at this time he took no particular notice of Claimant as his attention was fully diverted in securing the information being transmitted to him over the telephone. Upon ending his telephone conversation and observing that everyone had checked in for their tour of duty, Thomas handed out the Bad Orders and then left the shanty and proceeded to the University Park location where he talked with Jim Deady and others as part of performing his duties as relief foreman.

In and around but prior to 1:30 A.M., Thomas returned to Richton Park and began walking the yard. In the course of walking the yard, Thomas boarded the cars on the south end of Track 3 and began walking through the cars. According to Thomas, while walking through the cars, he came upon Claimant, and in very close proximity to him, he smelled alcohol on Claimant's breath. Thomas confronted Claimant and asked him if he had been drinking and, according to Thomas, Claimant's first response was that he had not been drinking. However, within moments thereafter, Claimant admitted to drinking beer prior to reporting to work, telling Thomas it had been his bowling night out. According to Claimant, as Thomas approached him, Thomas was talking to him while still walking and said to him he smelled alcohol on his breath and asked him if he had been drinking. Claimant asserted

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1/ Prior to May 1, 1987, Claimant had been employed by the Illinois Central Gulf Railroad with a date of hire of October 7, 1974. On May 1, 1987, ICG was acquired through sale to the Commuter Rail Division-Regional Transportation Authority (CRD-RTA) operating as the Northeast Illinois Regional Commuter Railroad Corporation known here as METRA/ELECTRIC. Assets acquired by NIRC from the sale of ICG included those used in providing commuter rail service from Randolph Street Station to University Park and the Blue Island and South Chicago branches. Additionally. NIRC assumed the ICG commuter service being operated between Joliet, Illinois and Chicago Union Station.

2/ Since 12:00 Midnight is the start time for Claimant's tour of duty, the hours thereafter that constitute the tour of duty fall on the following day and date so that the subject events surrounding Claimant's dismissal occurred on Wednesday morning, April 12, 1989. Nevertheless, the tour of duty is still referenced as the April 11, 1989 tour.

he answered Thomas in the affirmative, telling Thomas he consumed his last beer at 9;30 p.m. that evening. According to Claimant, Thomas then said to him he had smelled the alcohol when he (Claimant) entered the shanty when he first reported for work. 3/

Following Claimant's admission to him he had consumed beer prior to reporting for duty, Thomas immediately contacted Load Supervisor, Chuck Early, by telephone and related to him he had a man under his supervision he thought was "under the influence" and, as a result, requested the dispatch of a Special Agent. 4/ According to Thomas, Early, in turn, arranged for the services of Special Agent, Harold Herring who arrived on the scene approximately fifteen (15) to twenty (20) minutes later. 5/ According to Herring, after meeting with Thomas and being apprised by him he had an employee in the office who appeared to have been drinking, he then entered the office and proceeded to smell Claimant's breath but was unable to detect any odor of alcohol. 6/ Herring then asked Claimant if he had been drinking and Claimant stated in response, he had consumed two (2) to three (3) twelve (12) ounce bottles of beer while bowling between 6:30 p.m. and 9:30 p.m. the evening of April 11th prior to reporting to work. Thomas, according to Herring, then requested Claimant be given a breathalyzer test (ALCO-SENSOR III Breath Test) and Claimant consented to taking such test. As Herring did not have the apparatus with him to administer the test at Richton Yard, he, Claimant, and Thomas proceeded to the Metra Police Office

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3/ In his testimony at the Formal Investigation which was held following Claimant's removal from service, Thomas denied stating to Claimant he had smelled alcohol on his breath when he first reported for work.

4/ However, Thomas admitted in his testimony at the Formal Investigation that in observing Claimant, he did not appear to be intoxicated or unable to function properly insofar as performing his duties from the time he first reported to work.

5/ According to a written report of the subject incident subsequently prepared by Herring, he received instructions at 1:37 a.m. on the morning of April 12, 1989 from Metra Control Officer Crittenden to go to Matteson & Richton Coach Yard and meet with the Car Foreman.

6/ At the Formal Investigation, Thomas testified that when he encountered Claimant in the car which was about thirty (30) minutes prior to Herring's contact with Claimant, the odor of alcohol emanating from Claimant's breath was "very strong." In his testimony at the Formal Investigation, Herring did state, however, that in observing Claimant, he noticed Claimant exhibited slurred and mumbled speech.

located in Hazelcrest, Illinois where Claimant submitted to the administration of two (2) breathalyzer tests. The first test given at 2:30 a.m. yielded a reading of .026 and the second test given 23 minutes later at 2:53 a.m. yielded a higher reading of .031, both tests indicating a presence of alcohol on Claimant's breath. 7/ According to Herring, he and Thomas were witness to the first test, and the second test was witnessed by himself, Thomas, Officer G. Coughlin, and 18th Street Shop Superintendent, Don Tudor. After obtaining the positive results of the two (2) breathalyzer tests, Claimant was offered the opportunity to take a blood and urine test to disprove the results but, according to Herring, Claimant declined, stating the breathalyzer established he had alcohol on his breath and, therefore, he did not see any need to take the blood and urine test. Based on the test results, Claimant was removed from service pending formal investigation by Shop Superintendent Tudor at approximately 3:00 a.m., April 12, 1989. Tudor reduced this action to writing and issued Claimant a copy of the disciplinary notice. According to Company policy because Claimant had tested positive for alcohol on his breath, he was not permitted to drive his own vehicle home but rather was driven home to his residence located in Calumet City, Illinois by Officer Coughlin. 8/

Shop Superintendent Tudor averred he received a telephone call from Chuck Early at 1:35 a.m., the morning of April 12, who informed him of the suspected Rule G violation at Richton Park. According to Tudor, he first drove to Richton, but upon his

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7/ It was noted during Herring's testimony at the Formal Investigation that these are percent readings, and that certain tolerances have been set by both the Federal Railroad Administration (FRA) and the State of Illinois. For the former, it is .04, which Herring stated he was not knowledgeable about and for the latter, it is .10 which Herring stated he had knowledge of. Herring also stated he did not know the reason why the results of the second test would be higher than the first test, but that from his experience in administering other breathalyzer tests, the results of two tests often are at variance, but did not know if this was a "normal" occurrence. Having further acknowledged that even though the State of Illinois has a .10 tolerance standard for breathalyzer test results, the maximum allowable level permitted by Metra is .000 or in other words, Metra has a zero tolerance level.

8/ Herring acknowledged that given test results of .026 and .031, Claimant could have legally driven himself home as under Illinois law, one is not considered to be under the influence with breathalyzer readings of under .10. However, since the Company has established a zero tolerance level, it is the policy that any employee with a positive breathalyzer test be driven home.

arrival learned that Claimant had been taken by the Special Agent to Pal Center. Tudor proceeded to Pal Center and arrived there after the first breathalyzer test had been administered. Tudor, however, witnessed the administration of the second test. According to Tudor, he spoke with Claimant who admitted to him he had been bowling the night before and had consumed a beer with each game bowled. 9/ Tudor confirmed he was the Company official who removed Claimant from service, pending investigation based upon the positive breathalyzer test results. Tudor averred he was not sure whether the Company had ever publicized by bulletin its policy of zero tolerance with respect to alcohol consumption.

While Claimant admitted to consuming three (3) beers prior to reporting to work, he denied consuming any alcoholic beverage after he reported for his tour of duty. Claimant also stated he was not aware of the Company's zero tolerance level for breathalyzer tests, nor was he aware of any written Company policy or bulletin notices prohibiting employees from consuming alcoholic beverages at all times which, Claimant asserted, is the real effect of a zero tolerance level policy. Claimant averred that notwithstanding his consumption of three (3) beers prior to reporting for work, he functioned in a safe and proper manner while at work for his tour of duty on April 11th, and that he was not impaired while working. Claimant asserted that in consuming his last beer at 9:30 p.m., two and a half hours (2 1/2) prior to the start time of his tour of duty, that this was sufficient in terms of elapsed time to purge the alcohol from his system in order to allow him to perform his duties safely. Claimant further averred that had he known the Company had a zero tolerance level policy, and that alcohol remained in one's system for possibly up to 24 hours, he would not have consumed the beers prior to reporting to work. Claimant further stated it was his understanding that the Company's tolerance level was the same as that established for driving while intoxicated. Herring asserted that while he has not seen anything in writing publicizing the Company's zero level tolerance policy or notice to employees that consuming alcohol prior to coming to work even at a fairly lengthy period of time in advance of one's tour of duty could, in fact result in test readings above the zero level, he assumed that employees would possess such knowledge.

A formal investigation was held on Wednesday, April 19, 1989, at the end of which Rule G. Paragraph 5 of the General Rules was cited. Said rule as cited reads as follows:

9/ In his testimony at the Formal Investigation, Claimant admitted to consuming his "usual three beers" on bowling night, that is, one beer per game and that the beers were consumed over a three (3) hour period between 6:30 p.m. and 9:30 p.m.

> "The use of alcoholic beverages, intoxicants, drugs, narcotic, marijuana, or controlled substances by employees subject to duty, when on duty or on Company property is prohibited.
>
> Employees must not report for duty or be on Company property under the influence of or use while on duty or have in their possession while on Company property, any drug, alcoholic beverage, intoxicant, narcotic, marijuana, medication, or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response, or safety."

Also, Claimant's service record, dating back to his service at Illinois Central Gulf, was entered by the Company as part of the Formal Investigation but was objected to by the Organization on grounds that when becoming part of Metra, such previous record prior to May of 1987 was to have been purged. Subsequent to the Formal Investigation, by letter dated April 28, 1989, Division Manager, R.L. Soukup notified Claimant the Company had determined he was guilty of the charge of having used an intoxicant, narcotic, and/or controlled substance while subject to and/or on duty as an Electrician at the Richton Park Yard on Tuesday, April 11, 1989, and therefore, his employment was terminated effective April 28, 1989.

A claim was filed challenging Claimant's termination, and the Parties having failed to resolve the matter by way of various conferences on the property, comes before this Board for a final and binding determination.

STATEMENT OF POSITIONS

CARRIER

Carrier argues there is more than sufficient evidence before this Board to establish without doubt that Claimant was under the influence of alcoholic beverage at the time he reported to duty and while he was on duty for the first one and one-half (1 1/2) hours of his tour of duty, which was the third shift. This evidence consists of the following:

1. Claimant's admission on the evening of April 11th and again in his testimony at the Formal Investigation he had consumed three (3) twelve (12) ounce bottles of beer between the hours of 6:30 p.m. and 9:30 p.m. prior to reporting to work at Midnight.

2. The results of the two (2) breathalyzer tests administered to Claimant between 2:30 a.m. and 3:00 a.m., the morning of April 12th, both of which yielded a positive reading, the first at .026 and the second at .031 indicating the presence of alcohol on Claimant's breath.

3. Positive detection of alcohol on Claimant's breath by both Thomas and Tudor and an observation by Herring that Claimant exhibited slurred speech, and that he mumbled when talking.

Carrier argues that although Claimant may not have been inebriated at the time he submitted to the breathalyzer tests, noting that by the time he did so, he had already been on duty status for two and one-half (2 1/2) hours and, therefore, the effects of the alcohol may have lessened due to the rate of dissipation, nevertheless, it is not necessary under the general industry application of Rule G to establish inebriation in order to prove a violation of the rule. Carrier argues that as a railroad employee since 1974, Claimant had been subject to the application of Rule G for years and, therefore, should have been knowledgeable regarding the application of the rule. Carrier further argues that even assuming arguendo Claimant was not, in fact, familiar with Rule G and its application, he had a responsibility pursuant to the General Rules which requires employees to be familiar with and obey all rules, to inquire of Management as to the proper application of the rule. Carrier asserts that all that is necessary to prove a Rule G violation is to establish by witness observation and positive test results such as the breathalyzer test here administered that there is a presence of alcohol in the employee's system. Carrier further asserts it is supported in this view by innumerable Adjustment Board and Public Law Board awards. In the case at bar, Carrier argues that, not only was there witness observation by several Management officials of the presence of alcohol on Claimant's breath and the positive results obtained by the breathalyzer tests, but there was also Claimant's own admission against self-interest that he had imbibed alcoholic beverages, specifically three (3) beers several hours prior to reporting for his third shift tour of duty. Carrier submits this admission should prevent Claimant from prevailing in the instant claim. Carrier contends, given the egregious nature of a Rule G violation and the fact that Claimant was not a long term employee under its jurisdiction, that his termination from service should be upheld.

ORGANIZATION

The Organization contends Claimant was improperly and wrongly terminated from service of the Carrier and submits that the crux of this dispute concerns the interpretation and/or application of Rule G by Carrier as opposed to the rule's application by the

former Illinois Central Gulf Railroad. The Organization notes that in his thirteen (13) years of service with the ICG, Claimant was never reprimanded for a violation of Rule G though he comported himself on bowling nights during these years in the very same manner he conducted himself on the evening of April 11, 1989. The Organization submits Claimant fell victim to an overreaction by Thomas who was performing the duties of supervision on a relief status. The Organization takes issue with the fact that Carrier has never informed former ICG employees in writing or otherwise of its interpretation of the key elements comprising Rule G; for example, that the phrase, "under the influence of" as set forth in the rule's second paragraph is determined by a zero tolerance level as opposed to the normal or accepted tolerance levels as established by the FRA or by Illinois State statute. In having failed to inform its employees of a more stringent tolerance level, here, no tolerance level at all, vis-a-vis, the amount of alcohol present in one's system that would constitute running afoul of the prohibition of being "under the influence," the Organization argues the Carrier has also failed in its burden of proof to establish Claimant engaged in a violation of Rule G. The Organization submits it is incomprehensible that Carrier expects employees, here specifically Claimant, to be held accountable to comply with a policy Carrier has failed to communicate to its employees, especially one where failure to comply leads to dismissal from service. The Organization further submits that Carrier's position, as espoused in its letter of September 22, 1989, specifically that, "even in the absence of a .000 blood alcohol level Company policy ... an employee exhibiting symptoms of alcohol imbibition has historically been considered in violation of Rule G," is an untenable one, asserting that it was necessary for Carrier to advise former ICG employees of its policy on tolerance levels. The Organization contends that Carrier's failure to so advise employees of this policy, especially where Carrier has invoked dismissal as a means of enforcing this policy, leaves Carrier liable for basing its disciplinary actions on self-serving interpretations of Rule G.

Second, the Organization argues that Carrier has left undefined the phrase, "subject to duty" as set forth in the first paragraph of Rule G by not having set perimeters to guide employees. For example, the Organization submits that one interpretation of this phrase, the one that Carrier appears to invoke, is a perimeter that begins the minute an employee leaves work and ends the minute he reports back to work, thus seemingly prohibiting the consumption of alcoholic beverages by employees during all of their free and personal time. The Organization submits that this part of Rule G as applied by Carrier in the case at bar was unfair and amounts to an abuse of managerial discretion.

Finally, the Organization submits that a complete and comprehensive review of the investigation transcript fails to support Carrier's determination of Claimant's guilt, charging that Carrier's action of terminating Claimant's service was

predicated on its predetermination of Claimant's guilt and a biased attitude toward him. In support of this position, the Organization argues the hearing Officer at the Formal Investigation injected his bias against Claimant when he opined that "something was wrong with [Claimant]" at the onset of the hearing. Additionally, the Organization charges, the Hearing Officer failed to pursue the pertinent issue, which was to ascertain if, in fact, Claimant was "under the influence of" an alcoholic beverage. The Organization notes that Rule G cases, because of their nature, fall subject to great public scrutiny, but also notes that such cases are decided on the facts and circumstances germane and unique to each specific case. For that reason, the Organization implores this Board to adjust and decide the instant case based solely on its circumstances, facts, and merits, and requests the Board to sustain the subject claim in its entirety.

FINDINGS

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 24, 1990, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

In consideration first of the procedural defect raised by the Organization that Carrier had predetermined Claimant's guilt and was biased toward him based on one remark made by the Hearing Officer in the conduct of the Formal Investigation, this Board finds no such underlying prejudice. In our review of the hearing transcript, we find concurrence with Carrier that the remark was in the form of a question to the witness who was then testifying, specifically Car Foreman, Jessie Thomas, rather than in the form of a statement of fact. Clearly, the question as stated, "What lead (sic) you to believe there was something wrong with [Claimant] in the first place?" was not out of order and not out of the ordinary as it was a follow-up inquiry based on Thomas' just concluded testimony regarding a verbal interchange he had had with Claimant on the date of the incident pertaining to drinking on the job and reporting to work with alcohol on one's breath. In an attempt to ascertain why Thomas, following this conversation with Claimant, then arranged to have a special agent come to the yard, Hearing Officer Collins asked Thomas what it was that made him believe there was something wrong with Claimant, to which query, Thomas stated, he could smell it, meaning the alcohol on Claimant's breath. We note that while this question could have been posed differently, such as, what prompted you to suspect the presence of alcohol about Claimant, which is a question devoid of any supposition there was "something wrong" with Claimant, we also note that those Carrier officials who, from time-to-time function as Hearing Officers, are not professionals with respect to this role and, therefore,

should be forgiven their lapses of inarticulate interrogation of witnesses, in the absence of any other evidence of prejudice and bias in the conduct of the hearing.

As to the merits of the instant case regarding whether Carrier wrongfully dismissed Claimant for a Rule G violation, while we concur with Carrier's position there is a general industry application of Rule G, the facts of this case persuade us that Carrier's application of Rule G deviated from the general industry application. We respectfully disagree with Carrier's position that the two paragraphs comprising Rule G can be construed independent of one another. The first paragraph prohibits the use of alcoholic beverages, among other substances, by employees subject to duty or when on duty or while on Company property. Since the language of this paragraph makes a distinction between "when on duty" and "subject to duty," the latter phrase must necessarily mean being in a status other than duty status. Thus, it can reasonably be concluded that "subject to duty" has reference to a period of time preceding an employee's obligation to be on duty status and it is clear that this preceding period is left undefined by the language of this first paragraph of Rule G. In essence, the point raised by the Organization that, in the absence of time parameters, "subject to duty" can be construed as covering the general interim sixteen (16) hours between tours of duty, is deemed by the Board to have merit. Thus, absent defined guidelines as to what time frame in advance of going on duty an employee can consume alcoholic beverages without risking being in violation of Rule G, we must look for additional guidance to the language set forth in Paragraph 2 of the rule. In pertinent part, this second paragraph bars employees from reporting to duty or being on Company property under the influence of alcoholic beverage, among other substances, and from using alcoholic beverages while on duty or having alcoholic beverages in their possession while on Company property that will in any way adversely affect their alertness, coordination, reaction, response, or safety. The Board construes this language to mean that it is permissible for an employee to imbibe alcoholic beverages in their off-hours between tours of duty as long as such consumption does not adversely affect their alertness, coordination, reaction, response, or safety at the time they report to duty or thereafter when they are on duty status (emphasis by the Board).

In the case at bar, the Employer failed to establish at the time of the incident that the alcohol Claimant admitted to consuming that is, three (3) twelve (12) ounce bottles of beer between the hours of 6:30 p.m. and 9:30 p.m. had, in actuality, adversely affected his alertness, coordination, reaction, response, or safety at the time he reported to duty at 12:00 Midnight, two and one-half (2 1/2) hours after he consumed his third and last bottle of beer, or anytime thereafter when he was on duty status and performing his assigned work prior to being taken out of service. In fact, the record testimony indicates just the opposite. According to Thomas, at the time he encountered

Claimant in the car and smelled alcohol on Claimant's breath, Claimant did not appear to him to be intoxicated, nor did he appear to be unable to function properly. Thomas, in his testimony, answered in the affirmative that Claimant was performing his duties properly as far as he was concerned from the time he commenced working at 12:00 Midnight until 1:30 a.m., the time he encountered Claimant in the car. While a review of the Formal Investigation reveals an intimation that Claimant had consumed an alcoholic beverage after he reported for duty, that is, Thomas testified he did not smell alcohol on Claimant's breath at the time Claimant reported for duty, there is no substantive evidence in support of this intimation. We must, therefore, accept Claimant's account that he consumed the beers while bowling prior to reporting for work as representing the truth of the matter. It is possible, therefore, as the Carrier suggests, that at the time Claimant reported to work, the alcohol in his system might have had an adverse affect on him with respect to his alertness, coordination, response, or safety, but since his prior use of alcohol had not been detected until an hour and one-half (1 1/2) after he reported for duty, such suggestion is nothing more than mere speculation.

Even though there were no outward signs observed by Thomas that the alcohol consumed by Claimant had adversely affected his alertness, coordination, reaction, response, or safety, he, nevertheless, had probable cause, specifically the strong odor of alcohol he smelled on Claimant's breath, to arrange for a breathalyzer test, to be given Claimant as a means of confirming through objective test results whether Claimant had alcohol in his system. Those test results, as the record evidence shows, did, in fact, confirm Thomas' suspicion Claimant had alcohol in his system, but said test results did not reveal, by the two readings obtained, whether the alcohol in his system adversely affected his alertness, coordination, reaction, response or safety, which are the criteria provided for in Rule G. In this regard, Carrier's policy of a zero tolerance limit for the presence of alcohol in the system of an employee on duty status runs afoul of the criteria provided for in Rule G since there is no evidence in this record that a reading of under .04, the standard measure established by the Federal Railroad Administration, has direct correlation with an adverse affect on one's alertness, coordination, reaction, response or safety. In this Board's view, Carrier's policy of a zero tolerance limit applied in determining whether an employee is under the influence of alcohol is unreasonable in that it is unnecessarily restrictive of a worker's individual freedom in light of a federally established standard of .04 which recognizes this as a reasonable level beyond which it can be asserted with reasonable certainty that the majority of workers would be adversely affected with respect to their alertness, coordination, reaction, response, or safety. Additionally, the Board concurs in the Organization's position that although the policy is held here to be unreasonable, it, nevertheless, had an obligation to publicize the policy to those ICG employees, including Claimant, who became

part of the METRA workforce beginning May of 1987. Had Carrier made known its policy, Claimant may never have found himself in the predicament that led to his dismissal from service.

To briefly summarize the findings above, where the Carrier is unable, through eyewitness observation, to determine whether consumption of an alcoholic beverage(s) by an employee about to report to work or while on duty status has adversely affected his alertness, coordination, reaction, response, or safety, it is incumbent upon Carrier if the intent is to charge that employee with a Rule G violation and concommitantly assess discipline up to and including dismissal, to establish by way of a breathalyzer test and/or blood test, employing a reasonable standard, whether the consumption of the alcoholic beverage(s) has adversely affected his alertness, coordination, reaction, response, or safety. That a reasonable standard is not a zero tolerance limit, nor should it be more stringent than the .04 standard set by the Federal Railroad Administration. On the other hand, the obligation of an employee who has given the Employer probable cause to suspect him of having consumed alcoholic beverage(s) prior to reporting for duty or while in duty status is to cooperate with the Employer and to submit to tests which will establish whether or not he is under the influence, meaning whether or not the consumption of alcohol has adversely affected his alertness, coordination, reaction, response, or safety. In the case at bar, the record evidence establishes that once Claimant admitted to having consumed alcohol prior to reporting to work, he was cooperative and submitted to taking the breathalyzer tests requested by Thomas. Since the two test results obtained both yielded readings below the .04 FRA standard, the Board finds that Carrier failed to establish that Claimant had been adversely affected as a result of his alcohol consumption with respect to his alertness, coordination, reaction, response, or safety, thus failing to demonstrate a Rule G violation by Claimant. In so finding, the Board rules to sustain the claim with respect to points 1 and 2 of the claim as stated hereinabove. The monetary sum due Claimant for loss of wages suffered shall be offset by any unemployment compensation received by Claimant and by any wages earned by Claimant for the period commencing April 11, 1989 until the date of his reinstatement.

A W A R D

CLAIM SUSTAINED

Judy E. Butler
Carrier Member

Art H. Gonzales
Organization Member

George Edward Larney
Neutral Member and Chairman

Chicago, Illinois

Date: NOV 8 0 1992