

PUBLIC LAW BOARD 1837

(MW-MUN-77-42)

Case No. 8

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
vs  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The carrier violated the effective Agreement dated February 1, 1951, by unfairly and for unwarranted reasons it dismissed the claimant D. L. Digman from service.
2. The claimant now be restored to service with seniority and benefits unimpaired, and payment allowed for the assigned working hours actually lost, less any service in the service of the company.

FINDINGS:

This Board upon the whole record and all the evidence finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

Claimant was classified as an "Extra Gang Laborer," but performing duties as a Cook at the camp car when the incident for which he was removed occurred. He had been in service about 13 months when on April 6, 1977, at 12:15 p.m. he was observed by a supervisor at a restaurant near the Camp car location drinking a beer. According to the Carrier, this in violation of Rule G which states:

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

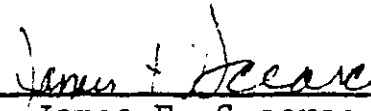
The record supports the Carrier's contention that, when the Claimant was confronted in this regard, his response centered around his belief that he was entitled to drink the beer since his hours of duty were 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. According to testimony of the Carrier supervisor, the Claimant asserted he had permission. Later that day, when confronted by the Roadmaster, the Claimant failed to establish any different basis for his drinking the beer. According to the record, the Claimant's immediate supervisor found a note even later that day from the Claimant advising that he had taken himself out of service at 10:00 a.m. due to illness. A hearing was held and, subsequent thereto, the Claimant's employment was terminated.

We are persuaded that the Claimant's silence as to his purported illness when confronted by the observing supervisor at the restaurant and later by the Roadmaster was fatal to his claim that he had already removed himself from service. Reason opposes silence under such circumstances. We are also inclined to give credence to the Carrier's rationale that an employee who was unable to perform his duties would also be too ill to visit a local restaurant and drink beer. We support the position that, while an employee may be at leisure during

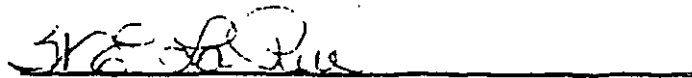
a scheduled work day, he owes the same responsibility to adhere to Rules as when at work. Under the circumstances, we find no basis to disturb the Carrier's action in this Case.

AWARD:

Claim is denied.

  
James F. Searce  
Neutral Member

  
G. C. Edwards  
Carrier Member

  
William E. LaRue  
Organization Member

Dated at Atlanta Ga on Aug 12, 1980