

NATIONAL MEDIATION BOARD
Public Law Board
No. 3063

Award No. 3.

PARTIES TO THE DISPUTE:

The Pittsburgh & Lake Erie Railroad and
The Lake Erie and Eastern Railroad Companies.

vs

Brotherhood of Maintenance of Way
Employees.

Case No. 4.

STATEMENT OF CLAIM:

Claim on behalf of J. Nowak that he be restored to service as a B&B Painter and compensated for all monetary losses sustained as a result of his dismissal from the service of the Company on June 16, 1980, as a result of the hearing held at Pittsburgh, Pa., May 28, 1980.

OPINION OF THE BOARD:

The Claimant, J. Nowak, employed by the Carrier for six and a half years as a Painter in its B&B Department was dismissed from service on June 16, 1980, for violating Rules D, G. and J-1 of the Carrier's General Rules and Rule 3002 of the Penn Central Safety Rules for Maintenance of Way and Structures Employees, which Safety Rules were adopted by PL&E. Formal investigation was held on May 28, 1980, in accordance with the rules of the applicable agreement, copy of the transcript was made a part of the record. A careful reading of the transcript indicates Claimant was given a fair and impartial hearing; he was represented by three Officers of his Organization, including his General Chairman; they were given the opportunity to produce witnesses, which they chose not to do; and, they were permitted to examine and cross examine Carrier' witnesses.

The applicable rules of Carrier's General Rules and Safety Rules read as follows:

"D. Employees must devote themselves exclusively to the Company's service while on duty.

"G. The use of alcoholic beverages, intoxicants or narcotics while on duty or subject to duty; being under the influence of alcoholic beverages, intoxicants or narcotics while on duty; or possession of alcoholic beverages, intoxicants or narcotics while on duty, is prohibited.

"J-1. Employees will not absent themselves from duty without proper authority.

"3002. alcoholic beverages must not be used while on duty or within 8 hours before reporting for duty."

The record is clear that Claimant was assigned to a position with assigned hours from 7:30 A.M. to 4:00 P.M., with a scheduled lunch period of 30 minutes between 12:00 and 12:30 P.M. On April 30, 1980, some time before 3:00 P.M., Claimant was found by two supervisors away from his work location during assigned working hours in Wagner's Bar drinking beer with a fellow employee from his work gang, this employee was also charged similar to Claimant but resigned prior to the hearing. Claimant testified in the hearing that he was aware of and understood the meaning and application of Carrier Rules quoted above and further testified that he violated these rules by being away from his assigned work location and drinking beer while on duty.

The Carrier proved its case beyond any reasonable doubt.

This employee, as shown by his personal record which was made part of the record before this Board, was suspended from service on two previous occasions for similar violations, indicating

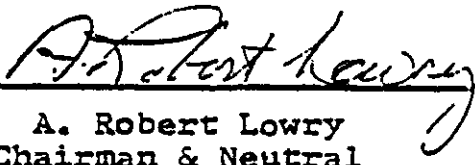
that the patience and compassion previously shown by the Carrier for this employee was of no avail. For these reasons, the Board will not disturb the discipline imposed.

FINDINGS:

That the Agreement was not violated.

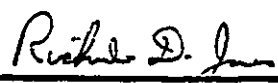
AWARD:

Claim denied.


A. Robert Lowry
Chairman & Neutral


Geoffrey N. Zeh
Labor Member

May 14, 1982.


Richard D. Jones
Carrier Member