

PUBLIC LAW BOARD NO. 2439

Award No. 61

Case No. 61

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when it suspended Messrs. Joseph A. Prieto, R. R. Salazar and Jose G. Virgen from service on October 8, 1981, pending formal hearing and thereafter, as a result of said hearing, held Claimants suspended from service through November 22, 1981, for their alleged violation of the Carrier's Rule G.
2. That the Carrier's allegation "under the influence of alcohol" be extracted from all correspondence in connection with the incident in dispute and the alleged charge be expunged from Claimants' personnel records and that they be paid for all time lost from their respective positions from October 9, 1981, through November 22, 1981."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees, within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates, without dispute, that on October 8, 1981, two Carrier officers noticed three employees (the Claimants herein) sitting on the railroad track in the city of Whittier with beer in their hands. The Carrier officers turned their vehicle around and found the three employees in a Company truck driving off (it was a half-hour from quitting time). The truck was stopped, the employees confronted and ultimately they agreed that they had been drinking some beer in that there were three partially-consumed cans of beer on the truck, one empty can of beer and five unopened cans. Following this incident and following, further, a formal hearing, the three men were found guilty of violation of Carrier's Rule G and assessed a suspension of 45 calendar days, which resulted in a net suspension of 31 working days. Carrier's Rule G provides in pertinent part as follows:

"The use of alcoholic beverages, intoxicants....by employees subject to duty, or their possession, use, or being under the influence thereof, while on duty or while on Company property, is prohibited"

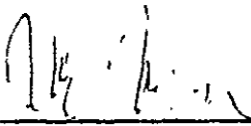
Carrier notes that all three Claimants, while not admitting that they were under the influence of alcohol, admitted to have drunk a little beer and having it in their possession while on working time and in the Company truck. Further, all three employees were familiar with the requirements of Rule G and blatantly ignored the rule, according to Carrier. Carrier maintains that the seriousness of railroad employees being involved in alcoholic beverages while on duty is unquestioned and is generally considered to be a dismissal offense. Under the circumstances, the 30-day working day suspension in this instance was moderate and well within reasonable bounds.

The organization notes that the Claimants each admitted to having consumed a small amount of beer. All three Claimants felt that a suspension of 45 calendar days involving more than \$2,000 worth of pay losses was excessive in view of the "crime" of consuming a half can of beer, particularly in light of their many years of service with Carrier. Further, the Claimants insisted that they were not under the influence of alcohol and that such statement was not only incorrect but damaging and erroneous in view of the fact that there was no test or other indication to determine if such, in fact, was true. Thus, while they insist that they were not inebriated, none of the Claimants denies the fact that they did, indeed, consume a little beer and had beer in their possession.

An evaluation of the testimony indicates that Claimants were correct in one regard. There is no evidence that they were under the influence of alcohol on the day in question. However, there is no doubt whatever that they had consumed a little beer and were obviously in possession of alcoholic beverages in the course of the incident. This act on their part, during working hours, and, indeed, in a Company vehicle (and previously on Company property), constitutes a blatant violation of Carrier's rules. Given the facts, which need not be belabored, it is clear that such conduct cannot be condoned. Under most circumstances, such an offense would warrant immediate dismissal. Based on the facts of this case, the relatively moderate discipline assessed cannot be considered to be harsh or an abuse of discretion. The claim must be denied.

AWARD

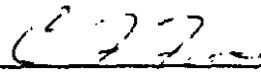
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foose, Employee Member

San Francisco, CA

October 12, 1983