

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 17

Case No. 18

System Docket No. BMW-E-D-153

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Richard Colombo was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Colombo shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

FINDINGS

The Claimant was subject to an investigative hearing under the following specifications concerning the charge of Rule G violation:

In that while working as a Crossing Watchman at Moody Street in Waltham on August 13, 1991, approximately between 10:00 p.m. and 11:00 p.m., you were suspected of being under the influence of an alcoholic beverage. Although you refused a field sobriety test and a breath

analyzer test by the Waltham Police and Roadmaster Scott Meloon, you were observed as having red, bloodshot eyes, slurred speech, and an odor of alcohol on your breath.

The hearing officer concluded, in his letter to the Claimant following the investigative hearing, that:

. . . you violated Rule G in that you were in possession of alcohol, you used alcohol and that you were noticeably under the influence of alcohol while on duty on August 13, 1991.

The reference to "possession" of alcohol refers to the finding of a partly full bottle of wine in the Claimant's car nearby.

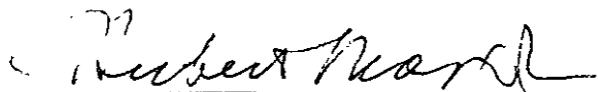
The Claimant denied the use of alcohol and stated that the bottle in his car did not belong to him. He confirmed that he had refused testing by either the police officer or the Carrier official.

The Board has no basis to question the hearing officer's conclusion as to the Claimant's violation of Rule G while in a duty status. The conclusion is fully supported by the record.

The Organization argues, among other points, that the Claimant should have been entitled to use of a Rule G waiver and referral to the Carrier's Employee Assistance Program. The difficulty with this is that the Claimant had been provided with this opportunity four years earlier, following another alcohol-related incident. The Carrier stated without contradiction that its unilateral policy of extending a Rule G waiver when appropriate is not granted more than once to the same employee.

A W A R D

Claim denied.



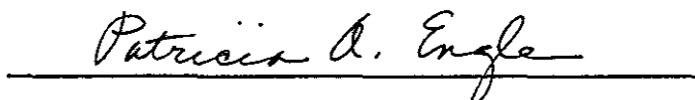
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HERBERT L. MARX, Jr., Chairman and Neutral Member



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B. A. WINTER, Employee Member



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P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: 7-7-92