

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 22

Case No. 22

System Docket No. BMW-D-182

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Michael Lassonde 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 and the Carrier's own stated policies.

(b) Claimant Lassonde 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 dismissed from service on October 26, 1992 following an investigative hearing under the following charge:

Violation of Rule G of the National Railroad Passenger Corporation Rules of Conduct which reads in part:

Employees subject to duty, reporting for duty, or while on duty, are prohibited from possessing, using, or being under the influence of alcoholic beverages, intoxicants,...

SPECIFICATION

In that while on duty in your position as Assistant Foreman on the morning of October 8, 1992, it is alleged you were drinking an alcoholic beverage in your maintenance crew truck in Waltham. You were subsequently administered a breathalyzer test by Roadmaster James Howland and the results tested positive for alcohol.

The breathalyzer test was administered as a result of a telephone call from an individual who claimed to have observed employees "drinking beer" in a truck which was being used by the Carrier. When the employees on the truck were found by Carrier officials, there was no reported observation of drinking or of containers with alcoholic beverages. When the Claimant was given a breathalyzer test, along with the other employees, he was found to have a blood alcohol level well in excess of that for determination of being "under the influence".

Question was raised by the Organization as to whether the reasonable cause alcohol test was proper under the Carrier's Drug and Alcohol Policy, which requires advance approval of the Corporate Personnel Office. The record demonstrates that the officials administering the test did consult with the appropriate Personnel Office representative and that there is no convincing showing that appropriate approval was not sought and received.

This Rule G violation, proven by the undisputed results of the breathalyzer test, warrants appropriate disciplinary action. In this instance, the Claimant had been involved in a Rule G violation

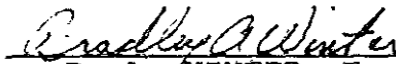
three years earlier and had accepted a waiver requiring two-year compliance with quarterly testing among other restrictions. The Board has no basis to disturb the Carrier's action in this second Rule G offense.

A W A R D

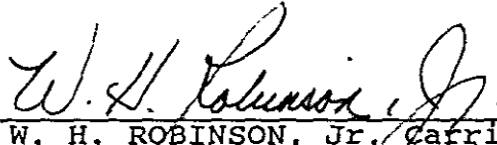
Claim denied.



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



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: *January 5, 1994*