

SPECIAL BOARD OF ADJUSTMENT NO. 936

Parties  
to the  
Dispute

:  
: Brotherhood of Maintenance of Way Employees :  
: :  
: vs. :  
: :  
: Norfolk and Western Railway Company :  
: (Lake Region) :  
:

Case No. 5  
Award No. 5

STATEMENT OF CLAIM

(1) The dismissal of Assistant Foreman Dan R. Graves, Truck Driver Jesse Day and Sectionman Carlton R. Cover for alleged use of alcoholic beverages and/or intoxicants while on duty was without just and sufficient cause and on the basis of an unproven and disproven charge. [File No. MW-MUN-80-60, 61 and 62].

(2) The Claimants shall be allowed the remedy prescribed in Rule 22(e).

OPINION OF THE BOARD

Claimants R. R. Graves, C. R. Cover, and J. Day were all assigned to Section 16 in Indianapolis, Indiana. Graves, with 12 years of service, was an Assistant Foreman. Day, with 30 years of service, was a Truck Driver, and Cover, with 15 months of service, was a Sectionman. On September 9, 1980, they were charged with use of alcoholic beverages and/or intoxicants while on duty. An investigation in the matter was held on September 22, 1980. Claimants

-2-

were found guilty as charged and dismissed from Carrier's service. The transcript of that hearing was made a part of the record of this case.

A review of that record reveals that Claimants were afforded a fair hearing and granted all due process rights required by Agreement. A review of that record also demonstrates that all three Claimants were guilty as charged and that they were in violation of Rule G. Claimant Graves, by his own admission, stated that he drank a half pint of vodka during his lunch hour. He clearly was in violation of Rule G when he returned from lunch after having drunk this liquor. Claimant Cover was observed returning to the property from the liquor store carrying a tall thin bag. He was also observed getting beer from his car and staggering.

When these facts are put together with the fact that a peppermint schnapps bottle was thrown out of the building that Claimants were in, it is not difficult to conclude that both Graves and Cover were drinking and that they were in violation of Rule G.

Testimony concerning Claimant Day is somewhat different than that given concerning Claimants Graves and Cover. It was testified that Claimant Day walked to his car with an empty glass. When he returned, it was full of beer. (The actual testimony referred to an amber-colored fluid.) It was also stated that when the glass was found later in the shanty, it smelled of beer. There is no testimony that Claimant drank beer from the glass.

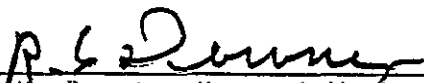
-3-


While it might be logical to conclude from the evidence presented that Claimant did drink beer on Company property, there is sufficient doubt about that fact that Claimant's dismissal from service is unjust. This Board is persuaded that Claimant, by his actions, placed himself in a compromising position and in conflict with Rule G. We are persuaded that he carried beer from his car to the section house. We are not persuaded, however, that this act alone is grounds for discharge from Carrier's service, given that he is an employe with 30 years of good service (the record does not state otherwise).

This Board has applied the principles in this case that like employes receive like discipline for like infractions. Account of his long service, Claimant Day should be given more consideration than Claimants Graves and Cover. In this regard, this Board is of the opinion that the dismissal of Claimant Day would be harsh and unjust treatment, given the total record of this case.

AWARD

The claim of D. R. Graves is denied.  
The claim of C. R. Cover is denied.  
J. Day shall be returned to work in his former position with all seniority but without back pay for lost time or benefits.  
This award shall be implemented within 30 days of being signed by this Board.

  
R. E. Dennis, Neutral Member

  
S. C. Lyons, Carrier Member

  
H. G. Harper, Employe Member

MAY 10 1984