

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 12

Docket No. NEC-BMWE-SD-1461D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On December 6, 1985, Claimant C.T. Stewart was medically examined following a work-related accident. Claimant was immediately dismissed on the ground that he violated Carrier Rule G, prohibiting employees from being under the influence of alcohol while on duty. On December 16, 1985, Claimant was notified to appear at a hearing on the charge; after postponements, the hearing was held on February 13, 1986. As a result of the hearing, the dismissal was upheld.

The Organization contends that Claimant first was notified of a possible Rule G violation on December 6, 1985, and the hearing on this charge originally was scheduled to take place thirty-three days later, January 7, 1986. Under Rule 71(a), a hearing must be scheduled within 30 days from Carrier's first knowledge of an alleged violation. The Organization asserts that Carrier's failure to comply with Rule 71(a) is a fatal procedural flaw and voids any attempt to impose discipline.

The Organization further argues that Carrier failed to introduce any probative evidence that Claimant violated Rule G. The Organization asserts that Carrier introduced two alleged clinical reports into the record without presenting the individuals who prepared the documents; Claimant therefore was deprived of his right to cross-examine the contents of these documents. Moreover, these documents are hearsay and of no probative value; there was no

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Evidence that the documents contained true and correct information, or that they were true and correct copies of clinical reports. Also, these documents do not contain any evidence that substantiates the charge. The documents do not establish a standard of comparison from which to measure the alcohol level reported for the Claimant. The Organization further contends that Carrier did not introduce any evidence that Claimant was impaired in any way or was unable to perform his assigned duties on the date in question.

The Organization finally argues that even if the odor of alcohol was detected on Claimant's breath and there was a level of alcohol in Claimant's blood, dismissal was excessive under the circumstances; there is ample precedent supporting a finding that Claimant should be reinstated. The Organization therefore contends that the claim should be sustained.

The Carrier asserts that the clinical reports show that on the date in question, Claimant's breath had a strong odor of alcohol and an alcohol content was measured in Claimant's blood. Moreover, Claimant's supervisor testified that Claimant had been driving erratically earlier that day. Carrier points out that there is no evidence that rebuts or denies the charge that Claimant violated Rule G. The Carrier contends that the record supports the conclusion that Claimant did violate Rule G. Carrier also argues that these reports are admissible hearsay; the reports were prepared by non-employees over whom Carrier has no subpoena power. Moreover, the Carrier contends that it is not essential to define a standard blood alcohol level in order to prove a Rule G violation; outward manifestations of intoxication are sufficient, and the test results confirmed the presence of alcohol in Claimant's system.

Carrier further argues that the Organization's assertions based on Rule 71(a) were not raised at trial; this argument therefore should be considered waived. Carrier points out, however, that it was not aware of a possible Rule G violation until December 9, 1986, when the doctor who examined Claimant called Carrier to discuss his findings. The scheduling of the hearing falls within the required thirty-day period.

Finally, Carrier contends that the assessed discipline was neither excessive nor an abuse of managerial discretion. All Divisions of the Board have found that violations of rules involving alcohol warrant discipline up to and including dismissal. The Carrier argues that considering Claimant's prior record and short length of service, dismissal was appropriate. The Carrier therefore contends that the claim should be denied in its entirety.

This Board has reviewed the procedural claims of the Organization, and we find that the Carrier complied with the requirements of Rule 71(a) in that a hearing was held within thirty days of the Carrier's first knowledge of a Rule G violation. Hence, all of the procedural requirements were complied with, and the Claimant received a fair hearing.

With respect to the merits, this Board has reviewed the evidence and testimony in this case, and we find there is sufficient evidence in the record to support the Carrier's charge that the Claimant was guilty of a Rule G violation. There is no doubt in the record that the Claimant was under the influence of alcohol while on duty on the date in question.

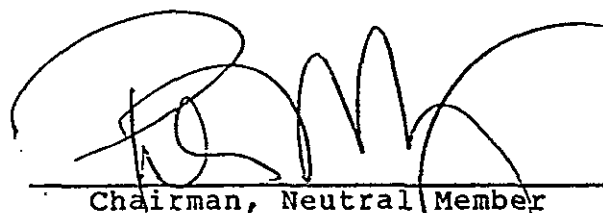
Once this Board finds that there is sufficient evidence in the

record to support a guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious.

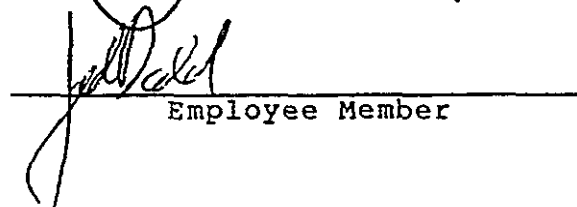
It is fundamental that violations of Rule G warrant discipline up to and including dismissal. This Board has taken into consideration the Claimant's prior record and seniority, and we find that it was not unreasonable, arbitrary, or capricious for the Carrier to terminate the Claimant in this case.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 7/24/87