

**Award 15579**

**Docket 27873**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

39 South La Salle Street, Chicago 3, Illinois

With Referee Thomas J. Mabry

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**PENNSYLVANIA RAILROAD COMPANY - CENTRAL REGION  
NORTHERN DIVISION**

**STATEMENT OF CLAIM:** "Renovo Division—Request that discipline by dismissal imposed upon J. A. Calhoun, later changed to suspension with time held out of service from May 23, 1949 to September 12, 1949 to act as discipline, be removed from his record, that he be restored to service, and compensated for all time lost in connection therewith, he being charged as follows: 'Use of intoxicants while available for duty, Violation of Rule 'G', Book of Operating Signal and Interlocking Rules, May 23, 1949.'"

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

There is no merit to the contention that carrier's offer to permit claimant to return to work constitutes an admission that the discipline imposed was unjust, no more than it can be said that a request for reinstatement upon a leniency basis necessarily presupposes the justness of the discipline.

Petitions for reinstatement upon a leniency basis are common to this and all other carriers. Perhaps no practice in carrier-labor relationship is better understood or more universally employed. It would be a fatal blow to the exercise of such leniency if it could be said that an offer to reinstate upon such basis would be an admission of error in the first instance. You would have badly crippled, if not destroyed, that facility so often employed in discipline cases whereby justice is tempered with mercy.

Likewise we find no merit to the contention that because the "decision" here involved was not given within forty-five days from the date of the meeting at which the matter was discussed, as the rule requires, carrier's right to have its discipline upheld is lost. The rule provides no penalty for failure to comply strictly with its terms, and, absent some showing of

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prejudice to claimant the failure to render such decision within forty-five days is not fatal to carrier's position. No prejudice is here claimed or shown.

There is ample evidence to support carrier's finding of a violation of Rule G and the discipline imposed will not be disturbed.

**AWARD:** Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **FIRST DIVISION**

**ATTEST:** (Signed) J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July, 1952.