

Public Law Board No. 1459

PARTIES
TO
DISPUTE:

United Transportation Union

and

Chicago and North Western Transportation Company

STATEMENT
OF
CLAIM:

Claim for reinstatement of former Engineer W. J. Pylppiw to his former position of engineer/fireman in Consolidated District No. 2 with seniority rights and privileges restored and pay for all time lost. BLE Rules 41, 54(b).

FINDINGS:

Claimant was dismissed for violating Rule G's prohibition against drinking an alcoholic beverage while subject to duty.

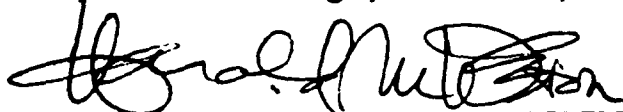
It is undisputed that the applicable time limit rule was not observed by Carrier and that claimant is therefore entitled to pay for time lost for at least the period from April 3, 1979, the date of his dismissal to the date Carrier's letter denying the claim was mailed, July 16, 1979.

The time limit violation does not in and of itself, however, mean that claimant must be reinstated to service. Accordingly, a controversy still exists as to whether he should also be compensated for the time lost from July 16 until November 7, 1979, the date he was actually reinstated.

In our view, the claim must be sustained in its entirety. Claimant was charged with a Rule G violation and not with playing fast and loose with Carrier's call-in regulations. There is no persuasive evidence that he actually was consuming an alcoholic beverage during the time in question. The fact that a trainmaster and a crew caller may have heard the tinkle of glasses and "bar noises" in the course of a telephone conversation is not sufficient evidence of a Rule G violation even if coupled with claimant's bragging that he had been drinking that afternoon. Circumstantial evidence can be sufficient to establish rules infractions; in this case, however, we do not find the evidence offered persuasive. The result might have been different if a call-in violation were charged and found.

AWARD: Claim sustained. To be effective within 30 days.

Adopted at Chicago, Illinois, Oct. 9, 1980.



Harold M. Weston, Chairman



J. D. Crawford
Carrier Member



Fred [unclear]
Employee Member