

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Firemen & Oiler Thomas Genovesi was unjustly suspended from service of the Carrier for thirty days following investigation held on June 22, 1979.
2. That, accordingly, the Carrier be ordered to compensate the aforementioned Thomas Genovesi for thirty days' lost wages.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant entered the Carrier's work force on January 20, 1978. On June 15, 1979, at approximately 12:15 p.m., he was sitting on an overhead bridge guard rail with a brown bottle in his hand. General Supervisor of Locomotive Operation Wayne Spruill drove by, within a distance of about 15 feet from the Claimant, and concluded that he was holding a bottle of beer. Spruill did not confront the Claimant at the bridge. He reasoned that if the Claimant were not on Carrier time, whatever he did was his own business. Spruill went back to his office and checked the daily force sheet to see if, in fact, the Claimant was assigned to work that day. He was so assigned.

Bill Lydon, another of the Carrier's management employees, was in the car with Spruill. He attests that he saw the Claimant sitting on the guard rail drinking a bottle of beer. There were two other men in the car as well. John Osterholt did not see the bottle. Al Price saw a dark bottle in the Claimant's hand, but could not identify its contents.

Later in the afternoon of the same day the Claimant was withheld from service. On June 18 he was notified to appear for an investigation into the following charge:

Violation of Rule "C" of the National Railroad Passenger Corporation Rules of Conduct, in that on June 15, 1979, at approximately 12:15 p.m., you were observed consuming alcoholic beverages while subject to duty.

The investigation was conducted on June 22. By letter dated July 3, 1979, Investigating Officer P. D. Driscoll informed the Claimant that he was suspended from service for thirty (30) days.

The Organization believes that Spruill should have confronted the Claimant the very moment he saw him. Had he done so, the Organization argues, he would have discovered that the Claimant was holding a bottle of Coke. The Organization asserts that the Carrier has insufficient proof of the charges against the Claimant.

The Organization did not raise any procedural arguments on the property, so none will be considered here.

The Carrier believes there is sufficient evidence to support the charges against the Claimant. Two eyewitnesses testified that he was holding a bottle of beer. One of them saw him drink from it. Thus, the Carrier argues, the suspension should be upheld.

After considering the arguments of both parties in detail, the Board has concluded that the record supports the Carrier's disciplinary action. First, the testimony of Messrs. Spruill and Lydon is persuasive. Both men had a clear recollection that the Claimant had a beer bottle in his hand. Moreover, Lydon testified that he saw the Claimant drink from it.

The Board was also influenced by the Claimant's testimony. He maintained throughout the investigatory hearing that he was drinking a Coke on the day in question. Then, in its submission to this Board, the Organization added that "Doc's Cola" comes in a brown bottle which looks very much like a beer bottle. If, in fact, the Claimant was drinking a Doc's Cola rather than a beer, the Board wonders why he did not say so on the property. The fact that he did not does little to convince us that he was drinking a Doc's Cola.

The Carrier's case obviously would have been much stronger had Spruill confronted the Claimant on the bridge and obtained the bottle as evidence. Even still, however, the preponderance of evidence in the record as it stands is sufficient to support the Carrier's charges.

Form 1
Page 3

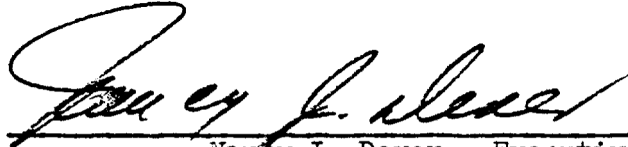
Award No. 9597
Docket No. 9403
2-NRPC-FO-'83

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.