

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20929  
Docket Number CL-20845

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, **Feight** Handlers, Express and  
( station **Employes**

PARTIES TO DISPUTE: (

(Robert W. Blauchette, Richard C. Bond, and John H.  
( **McArthur, Trustees** of the Property of  
( **Penn Central Transportation Company**, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7574) that:

(a) The Carrier violated the **Rules** Agreement, effective February 1, 1968, particularly **Rule 6-A-1**, when It assessed discipline of dismissal, later reduced to a **suspension**, on Odessa Winn, Usher at the **Pennsylvania** Station, Pam Central Railroad at New York City, New York.

(b) Claimant Odessa Winn's record be cleared of the charges brought against him on July 24, 1973.

(c) Claimant Odessa Winn be compensated for wage loss sustained during tha period out of service.

OPINION OF BOARD: Claimant was employed as an Usher at Pennsylvania Station, New York City. On July 24, 1973 he was working his regular assignment (3:15 P.M. to 11:45 P.M.) but was r-ed from service at 4:45 P.M. for au alleged Violation of "Rule 10".

On July 25, 1973 Claimant was advised to appear for an **investigation** for "Being under the influence of an intoxicant on July 24"..

Subsequent to investigation, Claimant was **dismissed from service**. During the appellate procedures, Claimant was restored to service, "solely as a matter of leniency".

Carrier produced **two** (2) witnesses to demonstrate **that on** the day in question, certain **indications** of improper job performance caused them to observe the Claimaut.

Although neither **observed** him consuming any alcoholic beverages (and the record is rather unclear that either formulated an **opinion** that he could not have completed his tour of duty) they testified as to the classic **indicia** of a person under the **influence**, i.e. **some** degree of slurred speech, glassy eyes, unsteady gait and an odor of alcohol.

Claimant denies that he **was** under the influence. He states that he **was** performing work on his 9th consecutive day, and was quite tired - which could account for certain of his physical manifestations.

It is conceded that when Claimant **was** being withheld from service he specifically asked to be taken to a doctor regarding the **accusations** against him. Carrier officials denied the request, and the record is silent as to the reason for such denial.

The Organization has raised certain questions concerning the propriety of withholding Claimant from service pending investigation. Our disposition of the dispute on the merits makes it unnecessary for us to rule on that contention.

The Board is of the view that Carrier officials should have attempted to comply with Claimant's request to visit a medical facility. In this regard, Carrier has stated, at page L0 of its **Ex Parte** Submission:

"Carrier asserts however, although an examination by a medical doctor **may** have conclusively determined whether or not Claimant **was** under the influence of intoxicating beverages, such a procedure is not required by the Schedule Agreement, **nor** is medical proof of intoxication required by the Board in order to support a carrier's findings in **Rule G cases**. As mentioned in the preceding paragraph, laymen are entirely competent to make a determination as to whether or not a person is intoxicated."

Although Claimant **was** charged with a "**Rule 10**" violation, rather than Rule G, the two Rules are similar in concept, which fact is obviously recognized by Carrier inasmuch as it referred to **Rule G** in its above cited statement. It is **interesting** to note that Carrier's **Rule G .b.** states:

"There is no objection from a company standpoint to a medical examination; in fact, in areas where facilities are readily available, there should be such an examination unless the **employee** refuses. There is also no objection to a sobriety test if it **can** be arranged and the **employee** will submit to it. The **employee** should not be denied a sobriety test if he **request** one and it is possible to arrange for one." (underscoring supplied).

We have reviewed cited Awards (including those authored by this Referee) concerning the quantum of **proof** necessary in these types of cases. Surely, as we noted in Award 20100, laymen are competent to testify as to

outward manifestations, physical actions and activities, and conclusions of intoxication (See also Award 20250). We do not depart, in any **manner**, from that conclusion. However, we feel that the facts of record **in** this dispute raise certain other considerations. While, clearly, this Claimant was not charged with a **Rule G** violation, nonetheless, Rule G .b., cited above, suggests that Carrier is not a **stranger** to the concepts of providing a sobriety test, if requested.

The unexplained refusal, on the part of Carrier's witness, to allow Claimant an examination and to obtain a blood alcohol content test certainly lends a degree of credence to Claimant's denial of wrong doing.

We have noted Award 19180, cited by Carrier, which stated that medical evidence is not essential to a finding of intoxication. We agree with that conclusion, but reliance on Award 19180 begs the question. In ~~that~~ dispute, the Organization asserted that Carrier erred when **it** failed to send Claimant to the first aid station. There **is** no indication **that** Claimant, in ~~that~~ dispute, requested - at the time of the accusation - that he be given medical verification of his condition.

We **stress** that the resolution of this dispute must, of necessity, be controlled by its own individual factual **circumstances**. Here, **Claimant was** accused, during **normal** daylight hours, in a busy metropolitan **area**, of being under the **influence** of intoxicants. At that precise **time** he **challenged** the statement and made his reasonable request. We feel that Carrier officials had **a** duty to attempt to comply. If medical attention **was** not reasonably available, then - of course - **other considerations** would control; But here, we are confronted solely with an unexplained refusal to assist in obtaining specific scientific indication of the Claimant's condition.

We will **sustain** the claim **and** Claimant shall be reimbursed in accordance with **Rule 6-A-1 (h)** of the **agreement**.

**FINDINGS:** The **Third Division of** the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That **the** parties waived oral hearing;

That **the** Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, **as** approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; end

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.