

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24293
Docket Number MW-24426

Paul C. Carter, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employes
Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of **Trackman E. Gaulman** for alleged violation of 'General Rule 16' was without just and sufficient cause and on the basis of unproven charges (System File **C-4(13)-EG/12-39(80-48) G**).

(2) **Trackman E. Gaulman** shall be reinstated with seniority and all other rights unimpaired. his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: **Claimant** was employed by the Carrier as a **trackman**. At the time of the occurrence giving rise to the claim herein. he was assigned to Section Force **8145 in Hialeah**, Florida, which force, along with other forces, was rebuilding a street crossing in the **Hialeah** area. The Carrier states that the crossing involved was heavily travelled, necessitating that the work be performed at night and on week ends. **Claimant's** force, under the supervision of Foreman **D. E. Wine** and Roadmaster **L. E. Wainwright**, reported at 12 midnight, Friday, March 14, 1980, and was to work through Saturday, March 15.

The Carrier contends that about 1:00 A.M., March 15, Claimant was observed by the Foreman, the Roadmaster, and the Special Agent to be in an abnormal condition. He was relieved from duty about 2:00 A.M. by the Roadmaster, and on March 21, 1980, he was charged with violation of General Rule 16 of the Safety Rules for Engineering and Maintenance of Way Employes concerning the use of intoxicants, drugs or anything that may impair senses or alertness. Investigation was conducted on April 9, 1980, and Claimant was dismissed from service effective April 29, 1980.

General Rule 16 of the Safety Rules for Engineering and Maintenance of Way Employes reads:

"16. **Employes** on duty must not use or be under the influence of intoxicants, drugs or anything which may impair senses or alertness."

A copy of the transcript of the investigation has been made a part of the record. Upon review of the transcript, the Board finds that none of Claimant's substantive procedural rights was violated. The investigation was conducted in a fair and impartial manner. Claimant was present throughout the investigation and was represented. While there was some question as to when the Claimant received the letter of charge, he stated at the beginning of the investigation that he was ready to proceed.

In the investigation the Roadmaster, the Foreman and the Special Agent each stated that he smelled alcohol on Claimant's breath, and that Claimant's actions were not **normal**. The **Claimant** denied that he had been drinking. Two witnesses were present in his behalf. One witness stated that **Claimant** did not **appear** to be under the influence of intoxicants. The other witness was indefinite, stating that he **really** could not say whether Claimant was drinking.

There were conflicts in the evidence presented at the investigation. However, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions **are** reserved to the hearing officer.

There was substantial evidence presented at **the** investigation in support of the charge against Claimant. The discipline imposed was not arbitrary, capricious, or in bad faith. The claim will be denied.

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; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **14th** day of April **1983**.

