

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25082
Docket Number MW-24872

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Chesapeake and Ohio Railway Company

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

(1) The fifteen (15) days of suspension imposed upon **Trackman** E. H. Brink III for allegedly 'being under the influence of intoxicants while on duty' on June 19, 1981 was arbitrary, unwarranted and on the basis of unproven charges (System File C-D-1186/MG-3191).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The claimant, a three (3) year **employee** of the Carrier at New Buffalo, Michigan fell against some railroad ties on the morning of June 19, 1981. He was taken for medical treatment and asked to take a blood alcohol test to determine whether he had been drinking and was under the influence of alcohol. He refused to take the test and subsequently was suspended for fifteen (15) days for being "under the influence of intoxicants."

At his investigation the claimant alleged that he had been drinking the night before and had not taken anything to drink after 12:30 or 1:00 a.m. But he asserted that since he had neither eaten breakfast nor brushed his teeth in the interim that would account for the smell of liquor on his breath.

The Carrier witnesses testified that two Foremen were suspicious that his accident was caused by alcohol and requested a third management representative to accompany the Claimant to the medical facility and secure a blood alcohol test.

The Supervisor who accompanied the Claimant testified that he smelled alcohol on the Claimant's breath and that his eyes were bloodshot. The examining physician also noted the smell of alcohol and furnished a written statement to that effect. Further the Supervisor concluded:

"Q. (28) In your opinion was Mr. Brink under the influence of intoxicants at any time you were with him?
A. (28) I would have to say yes."

The Claimant refused to take the blood alcohol test and admits,

"Q. (62) You have heard Mr. ~~Cran~~'s testimony, do you deny the remark he attributes to you ~~that~~ you were fearful that the test might display alcohol in your blood?
A. (62) No, I don't deny it."

Based upon that evidence the Carrier's conclusion that the Claimant was under the influence of intoxicants is warranted by the testimony. It would be a strain on credibility to conclude that beer consumed at 1:00 a.m. would still be

so noteworthy ten or eleven hours later that the doctor would remark upon it. The Carrier concluded that the Claimant came to work at 8:00 a.m., tripped and fell at about 8:30 due to his alcohol induced condition and disciplined him for the offense.

With the Carrier's deduction the Board must agree that there was substantial and sufficient evidence to uphold the findings.

While the Employes protest the introduction of the physician's written testimony without the opportunity for cross examination there is no prohibition against this evidence. Further, Awards No. 16308 and 6103 of the Third Division are cited as permissive and controlling.

The Board is forced to concur with the Carrier's action in this case and will not disturb the discipline for so serious an offense.

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 Employes involved in this dispute are respectively Carrier and Employes 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:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.