

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25151
Docket Number SG-24129

Wesley A. Wildman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: {

(Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Richmond, Fredericksburg and Potomac Railroad company:

The Carrier failed to sustain its required burden of proof in the case of Lead Signalman A. L. Strader who was assessed a suspension of thirty (30) calendar days for alleged violation of Carrier's Rule "G". Carrier should therefore be required to rescind the discipline and compensate Claimant for all time lost as a result of his suspension.

[Carrier file: Appeal-Discipline-Arthur L. Strader, Jr.]

OPINION OF BOARD: Claimant in this case was given a thirty calendar day suspension from duty without pay for alleged violation of Carrier's

Rule G:

"The use of intoxicants OR narcotics by employees available for, or while on duty, or their possession while on duty, is prohibited."

Evidence against Claimant comes from two sources. First, Claimant's immediate supervisor although allowing Claimant to go on duty, testified that he became aware of the odor of alcohol emanating from the accused during a discussion between the men prior to the start of Claimant's shift. A more significant, detailed account of Claimant's alleged condition comes from a Police Agent on the property who was asked to investigate whether Claimant had been drinking and whether he was or not possibly "under the influence". The Police Agent (who, incidentally, established himself as having some considerable expertise in these matters) testified at the hearing on the property that his initial contact with Claimant disclosed that

"A. His eyes was (sic) glassy, his face was slightly reddened. He was not staggering. His speech was not slurred. There was an odor of alcoholic beverage on or about his person".

The Police Agent testified further that when he subsequently escorted Claimant from the property, Claimant's condition was identical "...except for smelling the odor of an alcoholic beverage on him stronger than what I had earlier...". (This, the agent assumed, was the result of the fact that agent was in closer proximity at this time to Claimant in a more confined area than had been the case during his initial investigation.) Claimant passionately denies having consumed any alcohol on the day in question. In addition, Claimant's Organization representative submitted for the record at the hearing affidavits from three employees who claimed to have interacted with Claimant one-half hour before the start of his shift without finding any evidence of alcohol consumption by Claimant.

First, it is clear to this Board from the record that there is, in the testimony of both the Assistant Supervisor and the Police Agent, substantial competent evidence (from sources with no apparent motive for fabrication) to establish that Claimant reported to work and assumed his duties under the influence (to what extent is clearly not known) of alcohol in violation of Rule G. The Carrier has clearly met this vital threshold requirement in the making of its case against Claimant.

Second, we must recognize that we are posed in this case with the classic, profound credibility issue which can arise when a record discloses something close to substantial evidence (based on personal testimony) on both sides of the central issue. It is axiomatic, of course, that absent a finding of virtually per se arbitrariness or capriciousness in a credibility finding, this appellate tribunal does not overturn or disturb credibility assessments made by the Carrier flowing out of testimony in the hearing "on the property". The acceptance by Carrier of the substantial evidence against Claimant discussed above we do not find to be a patent abuse of discretion. Accordingly, the claim in this case must 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.

