

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25161
Docket Number MW-25371

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(National Railroad **Passenger** Corporation (**Amtrak**))

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

(1) The dismissal of **Trackman** F. Johnson, Jr. for alleged violation of "**Rule C**", "**Rule F**" and "**Rule J**" was without just and sufficient cause and on the basis of unproven charges (System Docket **392D**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The record shows that **Claimant** entered Carrier's service as a **Trackman** on July 10, 1976, and was working in that capacity at the time of the occurrence **giving** rise to the dispute herein.

On February 10, 1982, Claimant was notified to attend a trial on March 2, 1982, on the charge:

"Violation of N.R.P.C. Rules of Conduct, General Rule C reading as follows: 'Reporting for work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited.'

Violation of N.R.P.C. Rules of Conduct, General Rule P, reading in part: 'Employees will not be retained in the service who are careless of the safety of themselves or others.'

Violation of N.R.P.C. Rules of Conduct, General Rule **J**, reading as follows: 'Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or **vulgar** language is forbidden. Violence, fighting, horseplay, threatening or interfering (**sic**) with other employees or while on duty is prohibited.'

Specification: In that you were **observed under** the influence of alcohol while on Company property at Pennsylvania Avenue, Baltimore, Maryland, on January 29, 1982 between the hours of **4:30 p.m.** and **6:00 p.m.**, **endangering** the lives of yourself and others."

The trial was held **as** scheduled. Claimant **was** present at the trial and was represented. A transcript of the trial has been made a part of the record. A review of the transcript shows that the trial was conducted in a fair and impartial manner. There was objection to Claimant's prior discipline record being made a part of the trial. Such procedure was not in violation of any Agreement rule, nor was it prejudicial to Claimant, See Award 22740 and others cited therein. The prior record may always be considered in determining the discipline to be imposed for a proven offense, but may not be used to prove the charge under investigation. Following the trial, Claimant was dismissed from Carrier's service on March 16, 1982.

In the trial there was direct testimony from Carrier's Police Officer that on January 29, 1982, she observed Claimant on Company property in a highly intoxicated state; that he had a strong odor of alcohol, was staggering and could hardly stand up; his speech was slurred and he was very argumentative. She went on to testify that she approached the Claimant the second time on January 29 and asked him for his or his foreman's name; that Claimant responded to her in a vulgar manner, but did not give his name or his foreman's name, and departed the scene. During the trial Claimant contended that he did not remember the occurrences of January 29, 1982. His contention in this respect is not persuasive, and certainly does not offset the direct testimony of the Police Officer.

The contention has been made concerning the competency of the Police Officer to determine that Claimant was intoxicated. It has been held on numerous occasions that laymen **are** competent to judge intoxication without the aid of medical or other scientific tests. See Awards 10040, 13481, 24531, among others.

The contention is also made that it was improper to find Claimant in violation of the rules on the testimony of one witness. That is not exactly the case here - see the testimony of Electrician L. H. Bailey. However, many disciplinary cases have been decided on the basis of the testimony of one witness against the accused. As stated in Award **No.** 24388:

"In such cases the issue then comes down to the credibility of witnesses, as judged by the hearing officer.*

See also Award **No.** 24640.

There is no proper basis for the Board to **interefere** with the discipline unposed by the Carrier.

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**

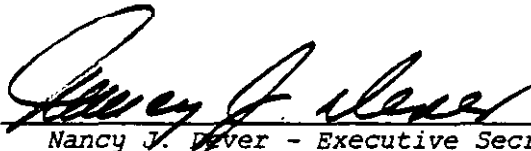
That the Agreement was not violated.

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 30th day of November 1984.