

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25369
Docket Number MW-25242

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The National Railroad Passenger Corporation
((Amtrak) - Northeast Corridor)

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

(1) The thirty (30) days of suspension **imposed** upon Foreman T. J. Love for alleged violation of "**Rule D**", 'Rule **E**', "**Rule G**", "**Rule H**" and "Rule **L**" on September 24, 1981 was arbitrary, capricious, unwarranted and on **the** basis of unproven charges (System Docket 2950).

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

OPINION OF BOARD: An investigation was held on September 29, 1981 pursuant to Agreement Rule 31 to determine whether Claimant was guilty of the **cited** specifications set forth in Carrier's trial notice of September 25, 1981. Claimant was occupying the position of Carpenter Foreman at the time of the notice. In particular, Claimant was charged with the following offenses:

"Violation of Amtrak Operating Rules and Instructions **AMT-1**, Rule D, reading in part: 'Employees must devote themselves exclusively to the Company's service while on duty.'

Violation of Amtrak Operating Rules and Instructions AMT-1, Rule E, reading in part: '**...participating in any...unauthorized** activity while on duty is prohibited'.

Violation of Amtrak Operating Rules and Instructions **AMT-1**, Rule G, reading in part: '**Employees...while on duty are prohibited from** possessing, using or being under the influence of alcoholic beverages...'

Violation of N.R.P.C. Rules of Conduct, **Rule H**, reading in part: '**Employees** must take every precaution to guard against loss and damage to the Company property from any cause'.

Violation of N.R.P.C. **Rules** of Conduct, Rule L, reading in part: '**Employees** shall **not...be** absent from **duty...without** proper authority'.

Specification: In that on September 24, 1981, at approximately **10:05** a.m., you were observed to be in violation of the above at the 4 D's Bar located near the corner of 8th and Market Streets, Marcus Hook, Pa. ■

Based on the investigative record, Claimant was notified by letter dated October 20, 1981, that he was assessed discipline of thirty (30) days suspension, and immediate disqualification as Foreman and Assistant Foreman. This disposition was appealed.

In defense of this petition, Organization argues that Claimant did not commit any of the offenses delineated in the trial notice while he was inside the 4 D's Restaurant-Bar on September 24, 1981. Claimant asserts that he was not derelict in his duties or unmindful of his responsibilities since this public eatery was the only reasonably located facility that had adequate restroom facilities for his female crew member and sufficient parking space for the large truck that was assigned to the crew. Claimant denies ingesting any alcoholic beverage prior to the time he was taken out of service at approximately 10:05 A.M. on September 24, 1981; and avers that he did not fail to take every precaution to guard against loss or damage to Carrier's property. It is Claimant's position that under the specific circumstances that morning, it was not unreasonable or impractical to use the restroom facilities and telephone at the 4 D's Restaurant-Bar.

Carrier contends that the facts unmistakably show that Claimant was unattentive to his duties when he was in the 4 D's Restaurant-Bar. It asserts that while he was sitting at the bar with four of his crew members, one of his crew was also standing at some sort of electronic machine and two other crew members were on the far side of the machine playing a game of pool. This account of the crew's location and activities was provided by Carrier eyewitnesses. Carrier avers that notwithstanding Claimant's assertion that trucks are left unattended "everywhere on the railroad., the Claimant's truck was not on railroad property, and by his admission, he acknowledged it was left unprotected on the street. Carrier maintains that Claimant's defensive posture is merely self-serving sophistry since the 4 D's Bar was not the closest facility with a telephone, nor the only facility with adequate restrooms or convenient parking. Instead, it argues that the 4 D's Bar, which was owned by the father-in-law of one of his crew members, provided an ideal location for impermissible relaxation.

In our review of his case, we agree with Carrier's position. Close analysis of the investigative transcript clearly establishes that Claimant's presence and activities pattern in the 4 D's Restaurant-Bar was unauthorized and totally unrelated to his normative job duties. In essence, we find no plausible basis to justify Claimant's decision to go to the 4 D's Restaurant-Bar. Other restroom facilities were readily available elsewhere that could have been used to accommodate the needs of the crew. Claimant's location at the bar and the engagement of several of his crew in recreational activities does not indicate a momentary work hiatus. Even assuming *arguendo* that adequate restroom facilities were unavailable at contiguously located rail situses, the use of the restrooms at the 4 D's Restaurant-Bar would not necessitate the relaxed recreational activities observed by Carrier witnesses. The relationship between the crew's needs and what in fact actually occurred, is incongruent. We agree with Carrier that the truck was not left secure and protected as required by Rule 8, and find that Claimant was palpably remiss by his unauthorized department. In view of Claimant's serious dereliction on September 24, 1981, and his prior fifteen (15) day suspension for damaging Amtrak property in 1979, we are compelled by this record to sustain Carrier's disciplinary suspension herein. It was neither improper nor excessive under these circumstances. While his disqualification as a Foreman or Assistant Foreman is not before us as a correlative adjudicative issue, we believe it would be unfair to preclude him permanently from occupying such a position and recommend that he be accorded consideration for a Foreman or Assistant Foreman's position when such positions are available.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985