

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26029
Docket Number MW-26000

Marty E. Zusman, Referee

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

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

(1) The dismissal of Trackman A. Royster for alleged 'VIOLATION OF NRPC RULES OF CONDUCT, GENERAL RULE "C" ...' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-687D).

(2) The Claimant's record shall be cleared of the charge leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was notified by letter of June 6, 1983, to attend a trial which after delays was held on July 19, 1983. The Claimant was charged with being on Carrier property under the influence of alcohol in violation of General Rule C. Following the trial Claimant was notified that he had been found guilty as charged and was dismissed from Carrier's service.

In the instant case, Claimant had just returned to service on a conditional and leniency basis. Both the Claimant and his Organizational representative had signed an Agreement settling previous discipline cases which among other stipulations required Claimant to continue participation in an alcohol rehabilitation program and avoid for a probationary one (1) year period any Rule violations resulting in discipline. Failure to maintain a clear record would result in Claimant being "dismissed from the service of Carrier without benefit of appeal."

A careful review of the record before this Board substantiates Carrier's findings of guilt. In the afternoon of May 27, 1983, the Claimant was on Carrier property and entered into discussion with a number of employees. Testimony documents that they smelled alcohol, found the Claimant somewhat incoherent with slurred speech and considered his behavior due to the influence of alcohol. On the whole of the record, this Board finds sufficient probative evidence of Claimant's guilt.

In support of the Claimant the Organization maintains that the Carrier should have requested a physical exam in that Claimant may have been having side effects from Antibuse. Organization also points to the fact that

the Claimant was not working on the day in question and that dismissal was inappropriate as Claimant was ill and making progress to total recovery. In response to the Organization, Carrier maintains that the appeal is improper under the conditions of the signed reinstatement Agreement. In addition, Carrier points out that there is no evidence Claimant used Antibuse on that day, a day on which he had been scheduled to work. Carrier asserts that the weight of the evidence in the instant case substantiates Claimant's Rule violation.

In view of the record before this Board, the evidence clearly substantiates guilt of the charges brought against the Claimant. The Board holds that the Agreement signed between the parties for reinstatement was binding and as such it will not consider the appropriateness of the assessed discipline.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

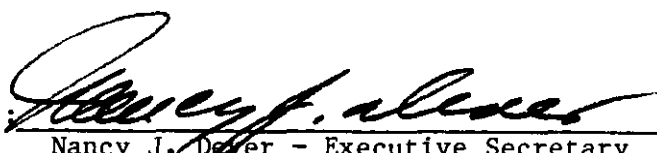
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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. Dover - Executive Secretary

Dated at Chicago, Illinois this 28th day of May 1986.

