

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26098
Docket Number MW-26445

Edwin H. Benn, 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 W. Kneipp for alleged 'Reporting for work under the influence of alcoholic beverages' on November 29, 1983, was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-791).

(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 employed as a Trackman at Penn Station, New York, and had approximately five years in the Carrier's service. In March, 1982, Claimant was diagnosed as suffering from Meniere's Syndrome. Symptoms of the illness are sudden severe episodes of dizziness, a sensation of hearing a roaring noise, fluctuating hearing loss and sometimes nausea and vomiting. At the time of diagnosis, Claimant was given medication for his ailment. Doctors examining Claimant stated that he was capable of working.

On November 29, 1983, Claimant accompanied an injured employee to the Carrier's Nurse's office in Penn Station, New York. While in the Nurse's office, Claimant allegedly behaved in a loud and boisterous manner attracting the attention of Police Officer Rinaldi. Division Engineer Zimmerman and Assistant Division Engineer Wurpel were summoned to deal with Claimant. As a result of the incident, Claimant was charged with the following and was ultimately dismissed for the same:

"Violation of Amtrak's Rules of Conduct,
Rule 'C' which states:
'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.'
In that on November 29, 1983 at approximately
12:23 pm you were observed to be under the
influence of alcohol in the Nurse's office in
Penn Station, New York during your normal tour
of duty."

An examination of the record leads us to conclude that there was substantial evidence to support the Carrier's termination decision. Laymen are competent to testify as to outward manifestations, physical actions and activities, and conclusions of intoxication. Third Division Award No. 20100. Clearly, the witnesses presented by the Carrier all testified about the outward manifestations of Claimant's intoxication. Coupled with the corroborated testimony that Claimant stated he was drinking after his tour of duty commenced and indeed, that Claimant even left his gang and went to a bar, we are unwilling to set aside the Carrier's conclusion that Claimant was intoxicated as alleged. The symptoms Claimant asserts resulted from his medication do not precisely correspond to the manifestations that were observed by the Carrier's witnesses. In any event, the alleged factual disputes raised by Claimant are not sufficient to change our conclusion that substantial evidence existed in this matter.

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 22nd day of August 1986.