

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26128
Docket Number MW-26197

Peter R. Meyers, 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 G. E. Gaines for alleged violation of Rule 'C' was without just and sufficient cause and on the basis of unproven charges (System Docket No. 736D).

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

OPINION OF BOARD: Claimant was employed as a Trackman by the Carrier having entered the service on March 24, 1977. At about 2:00 A.M. on March 15, 1983, Claimant was removed from service for an alleged violation of Rule C, which provides, "Reporting for work under the influence of alcoholic beverages ..., or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited." Claimant was subsequently notified to attend a Trial on the charge, which was held as scheduled on November 1, 1983. As a result of the Trial, Claimant was dismissed from service in all capacities. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This matter was scheduled for Hearing at 1 P.M. on March 17, 1986. The Organization's Representative was present; and although the Claimant had previously indicated to the Organization his intention to attend the Hearing personally, the Board waited until 1:15 P.M., and the Claimant still did not appear. In spite of his absence, the Claimant was extremely well represented by the Organization's Representative throughout the Hearing.

This Board has reviewed all of the evidence and testimony in this case and the excellent arguments made by the Organization's Representative at the Hearing, and we find that there is sufficient evidence in the record to support the Carrier's finding that the Claimant was under the influence of alcohol while on duty on October 15, 1983. The record contains testimony of witnesses that the Claimant had an odor of alcohol on his breath and that he admitted that he had been drinking. The witnesses also testified to his unsteadiness on his feet and a general incoherence on the part of the Claimant that night. Said testimony was credible and constitutes sufficient evidence for the Carrier's finding of guilty. Although the Claimant had offered some testimony that he had taken medication that smelled like alcohol, the Hearing

Officer rejected that testimony; and it is fundamental that this Board will not make credibility determinations or second-guess a Hearing Officer with respect to the credibility of witnesses. Hence, this Board will not set aside the finding of guilty.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed by the Carrier. This Board will not set aside a Carrier's imposition of discipline unless it is unreasonable, arbitrary, or capricious. In this case, the record indicates that the Claimant had previously been disciplined for drinking alcohol on the job in 1980 and previously discharged for the same offense of reporting for work under the influence of alcohol in 1982. He was later reinstated on a leniency basis. With that record before us, this Board cannot, in any way, find that the Carrier was unreasonable or arbitrary in discharging the Claimant in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 19th day of September 1986.

