

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26129
Docket Number MW-26209

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 J. E. Jordan for alleged 'VIOLATION OF NRPC GENERAL RULES OF CONDUCT RULE C ... I ... J ... K ... L ...' was without just and sufficient cause, on the basis of unproven charges and excessive (System File NEC-BMWE-SD-826D).

(2) The claimant shall be reinstated, his record shall be 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 with a seniority date of September 17, 1976. On February 21, 1984, Claimant was notified to appear at a Hearing on charges that Claimant had violated Carrier's General Rules C, I, J, K, and L. The notice specified that:

"At approximately 2:30 PM on February 9, 1984 you were observed to be absent from your assigned duty as flagman working with a crane near the Annex Building at the Ivy City Service Facility, Washington, D.C. At approximately 2:45 PM upon your return to your assigned work location, when questioned by your foreman, you responded to him with profanity; threatened the foreman and his family with bodily harm, you also were observed to be under the influence of intoxicants."

The Hearing began as scheduled on February 28, 1984, then was recessed and reconvened on March 1, 1984. As a result of the Hearing, Claimant was dismissed from service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the testimony and evidence in this case, and we find that there is substantial evidence in the record to support the finding that the Claimant violated several Rules of conduct while on duty on February 9, 1984. The record is replete with credible evidence of Claimant's vulgar and profane language directed at a Supervisor in response to a simple question inquiring as to Claimant's whereabouts. Moreover, there is sufficient evidence that the Claimant was insubordinate and quarrelsome with his

Supervisor and that he was under the influence of alcohol at the time of the incident. Hence, there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating several of the Carrier's Rules of conduct.

It is fundamental that this Board will not attempt to resolve conflicts in the testimony and that, absent any evidence of arbitrary or capricious behavior on the part of the Hearing Officer, the Board will not disturb the Hearing Officer's determination in that regard. This Board has reviewed the record, and we do not find any basis to set aside the findings of the Hearing Officer.

Once this Board has determined that the finding of guilty is warranted, we next turn our attention to the type of discipline imposed by the Carrier. This Board will not set aside discipline unless it finds that the action taken by the Carrier was unreasonable, arbitrary, or capricious. This Board has reviewed the record and finds that it was not unreasonable, arbitrary, or capricious for the Carrier to terminate the Claimant; and, therefore, this Board will not set aside the 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 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 19th day of September 1986.

