

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26321
Docket Number MW-26172

Martin F. **Scheinman**, Referee

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

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

(1) The fifteen (15) days of suspension imposed upon **Trackman** R. K. Badger for alleged 'VIOLATION OF **AMTRAK** SAFETY RULES AND INSTRUCTIONS, RULE #4002' and 'RULES OF CONDUCT, RULE "C"' on September 23, 1983 was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-714-D).

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

OPINION OF BOARD: At the time this dispute arose, Claimant was employed as a **Trackman** on **its** Baltimore Division. By letter dated September 27, 1983, Claimant was ordered to appear for a Trial in connection with the following charges:

"VIOLATIONS OF **AMTRAK** SAFETY RULES AND INSTRUCTIONS, RULE 84002, which reads in part: 'Narcotic medication, controlled drugs and/or alcoholic beverage must not be used by, or be in the possession of any **employee** while on duty **or** within 8 hours before reporting for duty.'

VIOLATION OF NRPC GENERAL RULES OF CONDUCT, RULE 'C', which reads in part: '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.'

SPECIFICATION: In that on September 23, 1983 at 1:00 a.m. between MP 48 and MP 49, you were observed to have had alcohol on your breath during your **tour** of duty."

The Hearing was held on October 4, 1983, whereupon Claimant was assessed a fifteen day suspension. The Organization appealed Carrier's decision. Upon the **parties'** failure to resolve the dispute on the property, the matter was advanced to this Board for adjudication.

The Organization contends that Carrier has not substantiated the charges against Claimant. **As such**, it asks that the Claim be sustained and that Claimant be made whole for time lost.

Carrier on the other hand, submits that the charges have been **proven**. It points **out** that Track Supervisor Brown stated, "I detected alcohol on his breath." Furthermore, Carrier notes, Equipment Engineer Rost testified, "His breath smelled of alcoholic beverage".

In addition, Carrier notes that Claimant acknowledged having taken a drink before coming on duty and that Claimant refused to take a blood alcohol test that could have exonerated him.

Under these circumstances, Carrier submits it properly found Claimant guilty of reporting for work under the influence of alcoholic beverages on September 23, 1983. Therefore, it asks that the Claim be rejected.

The record evidence reveals that Claimant did have alcohol on his breath on the day in question. Claimant should not have drunk alcoholic beverages so that while at work, his breath would contain this odor. However, while Claimant's actions were ill advised, the record does not substantiate his guilt of violating Rule 4002 or Rule C. Rule 4002 prohibits use of alcoholic beverages while on duty. It also prohibits use within 8 hours before reporting to duty.

Claimant testified that he had consumed an alcoholic beverage 10 hours before reporting for work. Nothing in the record contradicts this testimony. Nor is there any evidence that he possessed alcohol while on duty. Thus, he is not guilty of violating Rule 4002.

Rule C prohibits an **employee** from being under the influence of alcoholic beverages or using same while on duty. **However**, nothing suggests that Claimant was under the "influence." At most, the record reveals that he was "talking constantly." However, Carrier witnesses testified that Claimant was coherent and that his voice was not slurred. Therefore, there exists no evidence by which Carrier could conclude that Claimant was under the influence of alcohol on the day in question. Thus, while Claimant's actions are not to be condoned, Carrier has not established his guilt of the cited rules. **Accordingly**, and for the foregoing reasons, the Claim must be sustained.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.