

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26324
Docket Number MU-26189

Martin E. Scheinman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor)

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

1. The twenty-five (25) working days of suspension imposed upon **Trackman** T. Lyden for alleged violation of **NRPC** Rules of Conduct, Rule 'C' and 'J', was capricious, arbitrary and without just and sufficient cause (System File NEC-BMWE-SD-698D).

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: On August 4, 1983, Claimant was held out of service in connection with his alleged violations of Rule C and J insofar as they relate reporting for work under the influence of alcoholic beverages and acting in a boisterous manner with other employees. Subsequently, Claimant was found guilty as charged and was assessed a 25 working day **suspension**.

The Organization timely appealed Claimant's penalty. Carrier rejected the appeal. Thereafter, it was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Claimant did not **consume** any alcoholic beverages on the disputed day. Furthermore, the Organization insists that Claimant did not provoke an altercation that day. Instead, it argues Claimant swung at the Foreman in self-defense after the Foreman initiated physical contact. As such, the Organization reasons that no discipline was warranted and that the Claim should be sustained in its entirety.

Carrier, on the other hand, maintains that Claimant was properly disciplined. It relies on the testimony of Acting Supervisor V. **Deaner** who stated that he smelled alcohol on Claimant's breath. In addition, Carrier notes, Police Officer **Mague** stated there was a "strong presence of alcohol on Mr. Lyden's breath". As such, Carrier insists it properly found Claimant of being under the influence of alcohol and of having engaged in an altercation on August 4, 1983. In Carrier's view, a 25 day suspension is lenient for this misconduct. Accordingly, it asks that the Claim be rejected.

After reviewing the evidence, the Board is convinced that the Claim must be sustained in part. While Police Officer **Mague** detected a presence of alcohol, Sergeant Nolvvy did not smell anything. Given the fact that one Police Officer smelled alcohol and the other did not, Carrier has not met its burden of establishing that Claimant was under the influence of alcohol on August 4, 1983. At most, Carrier has demonstrated that Claimant had consumed an alcoholic beverage before appearing for work that day. Thus, Carrier has not established that Claimant violated Rule C.

However, **we** note that Carrier credited the Foreman's testimony that Claimant provoked the altercation which ensued. As such, Claimant clearly violated Rule J which expressly prohibits violence while on duty.

Under these circumstances, a ten working day suspension is appropriate. It reflects Claimant's innocence of violating Rule C. Nonetheless, it reminds Claimant that he must act courteously and properly while on duty. Accordingly, the Claim is sustained to this extent.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

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