

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26550

Docket Number MW-26492

Elliott H. Goldstein, 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 dismissal of Watchman M. Yorker for alleged violation of 'GENERAL RULE "C"' and 'GENERAL RULE 4002' on January 18, 1984 was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-810D).

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

OPINION OF BOARD: Claimant entered Carrier's service on July 19, 1976, and at the time of his dismissal held the position of Watchman on the Baltimore Division. He was discharged on February 10, 1984, after a "Investigation at which it was determined that he had been under the influence of alcohol **and/or** drugs while on duty on January 18, 1984.

At the Hearing, the Track Supervisor testified that he encountered the Claimant in the B & P tunnels at about 3:35 A.M. on the claim date and noted a strong odor of alcohol on his breath. When the Track Supervisor confronted the Claimant, he denied having had anything to drink during his tour of duty which commenced the prior evening at 9:30 P.M. He then summoned a Welding Inspector, who testified that he, too, smelled alcohol on Claimant's breath and, further, that Claimant's speech appeared irregular and his eyes were glassy. Claimant was thereupon brought to the office of the **Assistant** Division Engineer, who, at Hearing, corroborated the testimony of the other Carrier Officers' observations. The Assistant Division Engineer also stated that though Claimant denied that he had been drinking on duty, he admitted in response to his questioning that he had had something to drink several hours before coming to work. Claimant **was** thereafter removed from service pending further investigation.

Claimant at Hearing denied that he had been drinking, though he acknowledged that he told Carrier Officers "... anybody drinks before their job sometimes." He further conceded that he had been drinking King's Beer prior to coming to work, though he claimed that the drink was merely an alcohol "substitute" which has a "alcohol "odor."

Carrier contends that the Claimant in this matter received a fair and impartial Hearing at which substantial evidence of probative value was adduced to establish that Claimant is guilty as charged. Moreover, Carrier asserts that the discipline assessed for the Claimant's proven infraction was commensurate with the serious nature of the offense and consistent with industry standards for such conduct.

The Organization argues that a" objective review of the record establishes that the Claimant was not under the influence of alcohol while on duty; that instead he had ingested "King's Beer," a non-alcoholic beer substitute. It is also the Organization's position that the Carrier has not overcome the burden of proof in the instant case, particularly in view of the fact that Carrier's case is based solely on testimony that there was an odor of alcohol on Claimant's breath. This, the Organization stresses, is insufficient evidence standing alone to support the charge that a" employee is intoxicated.

Based on the record in its entirety, this Board finds that the evidence adduced at Hearing clearly established that Claimant was guilty of violating Rule C and Rule 4002 which prohibit being under the influence of alcohol while on or subject to duty. The Board is quite aware that the charge herein involved is very serious in nature resulting in the severe disciplinary action taken. However, the testimony of Carrier witnesses established that Claimant smelled of alcohol, had slurred speech and bloodshot eyes. The Organization's arguments notwithstanding, it is not necessary to employ a" expert to determine from the manner of speech or general conduct of a person whether or not he had used intoxicants. Numerous Awards of this Division have recognized that a layman's testimony of his observations is competent evidence to sustain a charge of being under the influence of intoxicants. See Third Division Awards 6102, 10040, and 20100.

The Board notes, too, that the testimony of Carrier witnesses is contradicted only by the Claimant's own self-serving testimony which is at variance with his statement made at the time of the incident. Under these circumstances, there is no basis for the Board to substitute its judgment for that of the Carrier. Carrier was not arbitrary, capricious or unreasonable, and, accordingly, we must rule to deny the Claim.

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.

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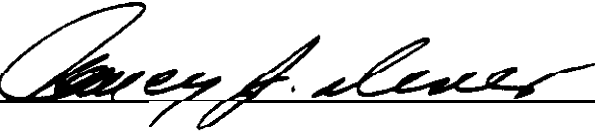
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.