

NATIONAL RAILROAD ADJUSTMENT BOARD

'THIRD DIVISION

Award Number 26579
Docket Number SC-26328

Marty E. Zusma", Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

Claim on behalf of Assistant Signalman J. James who was suspended in all capacities effective February 6, 1984. Carrier file **NEC-BRS-SD-185D.**"

OPINION OF BOARD: On January 15, 1984, Claimant was notified to attend a Trial to consider the charges against him; absenting himself from his work site (Rule D) and being under the influence of alcohol (Rule G). The Trial was held on January 23, 1984. On February 6, 1984, Claimant was notified that he had been found guilty of violating both Rules and was dismissed from service of the Carrier. On April 30, 1984, the Carrier reduced the discipline on a leniency basis to a seventy five (75) working day **suspension.**

In support of the Claimant the Organization raised several arguments on property. It maintained that the Claimant did not receive a fair and **impartial** Trial give" the actions of the Hearing Officer. With respect to the charges, it noted that the Claimant's gang leader was present during the Trial and was not called by the Carrier to testify as to the facts. Although similarly charged with a Rule D violation, the gang leader was later restored to service with **all** rights, benefits and pay, while Claimant was dismissed.

With respect to the charges the Organization takes issue with the testimony of the record. It notes that only one witness alleged the Rule G violation. Three other Carrier witnesses (as well as an Organization witness) did not corroborate the Supervisor's testimony. As for the Rule D infraction, the Organization maintains that the work level was the result in part of "weather conditions, improper tools, train **movements**" and the like, and not of leaving the work site from 1:00 - 2:30 P.M. It supports Claimant's arguments of a late lunch period.

This Board has reviewed the procedural arguments of the Organization. The arguments are denied due to a lack of evidence. The Claimant received his contractual rights to a fair and impartial Trial. Although the gang leader was returned to service, that does not excuse the Claimant from his employment responsibilities in the incident at bar (Third Division Awards 24989, 25905).

With respect to the charge of absenting the work site from 1:00 - 2:30 P.M., the record provides substantial evidence to support that conclusion. The work of removing T-20's was "either completed, "or significantly begun. The Assistant Foreman notes that the gang had accomplished less than half of the work expected. There is in evidence no mitigating factors such as weather to explain the lack of work completed. Claimant argues a late lunch as a" explanation. The evidence indicates that such lunch may have begun far earlier than the 1:20 P.M. time the Claimant admits to. Even if the 1:20 P.M. time were accurate, Claimant would have been absent from the work site forty (40) minutes beyond the scheduled lunch period. With regard to a violation of Rule D, there is substantial evidence in the record for a finding of guilt.

With respect to the Rule G violation, the Claimant denies any use of alcohol. The Supervisor charged Claimant with the violation based upon the smell of alcohol and his perceptions that the Claimant's movements were "slow and his speech quite slurred." The Supervisor C&S noted that the Claimant "didn't seem to be like his normal self." He further detected a "trace of alcohol" and when Claimant was in a truck a "distinct odor of alcohol." The Claimant said he was not on "medication" and refused a blood test which he was not obligated to take.

This Board notes that no other Carrier witnesses smelled medication or alcohol, "or detected any abnormal manifestations of behavior normally associated with alcohol. The Organization **therefor** argues that the evidence is lacking to support the Carrier in assigning credibility to the Supervisors charges, when four other witnesses observed no indications of the influence of alcohol in the Claimant's behavior.

This Board in its appellate role does not resolve issues of credibility **or** contradictory testimony (Third Division Award 26031). It determines if **there** exists substantial evidence to reach a **conclusion** of guilt. That has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a '**conclusion**'" (Consol. Ed. vs. Labor Bd. 305 U.S., 197, 229). The lack of other supporting testimony has been carefully reviewed. There is nothing in the testimony to indicate that other witnesses were in direct proximity and so close as to have been clearly able to detect alcohol. While the Supervisor was twelve inches away, no evidence of record shows any of the other witnesses closer than twenty four inches away. As such, **there is** no evidence of record that the weight given by the Carrier **to** the testimony of Supervisor C&S was arbitrary **or** in error. In addition, nowhere in the record was that testimony shown to have been based on presumption, rather than fact; shown to have been motivated by ill-will **or** like factors; shown to have been mistaken, exaggerated or manufactured; or shown through cross-examination to have been inaccurate. As such, this Board *considers* such testimony as "adequate to support a **conclusion**" of guilt with respect to the Rule G violation.

In view of the record before this Board. as well as the Claimant's prior record which was introduced on property, and **must** be viewed only with respect to the quantum of discipline, this Board **cannot** conclude that Carrier's determination in this matter was arbitrary, capricious or unreasonable. As such, the Claim is denied.

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 30th day of September 1987.