NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26583

THIRD DIVISION Docket Number MW-26632

Edwin H. Be"", 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 Painter A. McCullough for alleged 'Violation of Amtrak Rules of Conduct, Rules "F", "I-, "J", and specification - Alcohol' was without just and sufficient cause, on the basis of unproven charges and arbitrary (System File NEC-BMWE-SD-1057D).

2. The claimant shall be restored to service 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, a Bridge and Building Painter on the Carrier's New York Division, was in the Carrier's service for approximately eight years. After charges dated July 2.7, 1984, and Hearing on August 29, 1984, Claimant was dismissed from service by letter dated September 10, 1984.

On July 13, 1984, Claimant was not on duty but was a passenger riding on one of the Carrier's trains. Claimant testified that he participated in a card game and then fell asleep after the train departed Savannah, Georgia. Claimant was awakened by a porter as the train was departing from Claimant's Jacksonville, Florida destination. Seaboard System Railroad Yardmaster C. D. Thompson testified that at approximately 5:15 A.M., after he cleared the train to depart Jacksonville, he heard a commotion and turned to observe Claimant hanging out of the side of the moving train while holding his bag. Thompson then radioed the Engineer to stop the train. Thompson approached Claimant to ascertain if Claimant was injured. According to Thompson, Claimant had difficulty standing up and kept stumbling. Thompson then made certain that the train could depart without injuring Claimant telling Claimant to sit down until the train cleared. According to Thompson, Claimant "told me that he wouldn't take orders . ..." Thompson then called the Police. Thompson testified that Claimant appeared very disheveled, was red-eyed, spoke with slurred speech and smelled from alcohol. Claimant then blocked Thompson from going towards the station and at the same time was staggering.

Carrier's Car Foreman J. L. Austin, who also observed Claimant hanging on the side of the train, approached to assist Thompson, Claimant continued to curse. Austin testified that Claimant appeared glassy eyed, had slurred speech and could not be reasoned with. Austin told Claimant to get off the property since Claimant had been drinking. Austin and Thompson, followed by Claimant, went into the station by the ticket agent and the Police were again called. Claimant continued cursing and talking to himself. According to Austin and Thompson, there were passengers present in the station. According to Austin, women and children were present. Claimant was then arrested and charged with disorderly intoxication (a misdemeanor). A search of Claimant's belongings disclosed that he was a Carrier employee and further disclosed two quarts of vodka in a large grocery bag. One of the bottles was partially empty. Claimant was subsequently charged by the Carrier with violation of Rules F, I, J, and Specification - Alcohol.

The Organization argues that disciplinary action was not appropriate in this case since Claimant was not on duty at the time of the incident but was a passenger on the Carrier's train and there is no evidence that Claimant's activities presented a problem of image or decorum or that the Carrier was impacted in any fashion. We disagree. The rule is that employees can be held accountable for conduct during off duty hours if that conduct causes a negative and detrimental impact on the employer-employee relationship. See Second Division Awards 7972, 7570, 5681; Third Division Awards 26203, 25706, 21825, 11052, 8993; Fourth Division Award 2127. Here, the record establishes that Claimant was intoxicated and disorderly to the extent that he was hanging on the side of a moving train; used profanity against and further threatened two Supervisors. Although the incident occurred while Claimant was off duty, nevertheless, Claimant was on the Carrier's property at the time. Claimant's activities were also carried on in the presence of patrons. We find no basis in this record to set aside the discrediting of Claimant's denials of the statements attributed to him by Thompson and Austin. Nor can we accept Claimant's altogether different version of the incident. The credibility of witnesses and the weight to be given their testimony is for the trier of fact and not this Board. Second Division Awards 9282, 8861, 7542; Third Division Award 26194. Substantial evidence in this record shows that Claimant's egregious conduct clearly falls within the stated doctrine concerning off duty conduct as well as the cited Rules. Not only do we find a detrimental impact on the employer-employee relationship, but we also find that Claimant's actions affected the Carrier's image.

We cannot say that the assessment of dismissal was either arbitrary or capricious. Claimant's prior record (which we view only to determine whether the amount of discipline imposed was appropriate as opposed to whether Claimant was guilty of the charges against him) shows numerous prior disciplinary actions. Even if we did not consider Claimant's prior record, in light of the gravity of the misconduct demonstrated in this case, we would uphold the penalty of dismissal. We therefore find no reason to disturb the disciplinary action.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois. this 27th day of October 1987.