

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26588
Docket Number MS-26846

John E. Cloney, Referee

(Richard S. Ambrogio
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Please accept this **as** official appeal of my 'notice of discipline' 'dismissal in all capacities' for alleged violations of 'Amtrak Operating Rules & Instructions'. one violation of General Rule 'G' and two violations of General Rule 'D'."

OPINION OF BOARD: On March 28, 1985, Claimant who had been employed as a Signalman since May, 1977, was charged with violating Rules D (insubordination) and G.

An Investigation was conducted on April 15, 1985. Testimony offered at Trial was that two Carrier Officers detected the odor of alcohol on Claimant, that Claimant although agreeing to be tested left the hospital to which he was taken before the tests were completed and thereafter failed to report to the Assistant Division Engineer although he was repeatedly instructed to do so. Claimant's position is that he couldn't have been insubordinate in that he had previously been taken out of service.

On April 19, 1985, the Division Engineer notified Claimant that he was dismissed. Claimant appealed by letter to the Assistant Chief Engineer, Communications and Signals who denied the appeal on May 16, 1985. On May 28, 1985, Claimant appealed to the Director of Labor Relations. On July 24, 1985, the Director of Labor Relations denied the appeal on its merits and also as procedurally defective in that:

"...The case record contains no indication that the Assistant Chief Engineer C&S/ET was given notification that his decision had been rejected...."

On February 12, 1986, Claimant wrote the Executive Secretary that he wished to "process this to the National Railroad Arbitration Board." In Claimant's Ex Parte Submission dated March 21, 1986, he requested an oral hearing. Oral hearing was granted on September 2, 1986, at which time Claimant requested a Referee Hearing, which was later scheduled for May 22, 1987. On April 3, 1987, it was rescheduled to June 8, 1987, at 1:30 P.M. Claimant did not appear.

At the April 15, 1985, Investigation on the property it was established that Claimant's record included three prior suspensions for Rule D violations as well as a dismissal for a Rule G violation after which he was returned to service on a last chance basis by this Board in Third Division Award 24873 adopted on June 28, 1984.

In his Submission Claimant contends he has been the victim of harassment by Carrier and lack of representation by the Organization. He also appended documents purportedly showing the results of lab tests he underwent subsequent to leaving the hospital to which Carrier had taken him. As these documents were not produced at the Trial this Board is in no position to evaluate them at this stage of the proceedings and we therefore must disregard them.

The only reference to procedural infirmities made on the property is contained in the Director of Labor Relations' letter of July 24, 1985, that the record "contains no indication" of notice to the Assistant Chief Engineer that his decision had been rejected. This was not developed further. Claimant's appeal letters were **all** handwritten and contain no information regarding to whom copies may have been sent. While this Board agrees that proper notice is a sine qua non to processing on Appeal we do not understand Carrier to be denying such notice was given. Therefore in the circumstances of this case we shall consider the merits. In doing so we note at the outset that contrary to Claimant the record shows no evidence of harassment by Carrier and does show that Claimant was in fact represented by the Organization at Trial, and again at an Appeal hearing held on May 15, 1985.

This Board has held in Rule G cases that:

"...the degree of impairment is not essential, as we would not condone the performance of work by those under even the slightest alcoholic impairment." (Third Division Award 15023)

Further we have repeatedly held laymen are competent to testify whether an individual has used intoxicants and, in a case involving this Claimant, that the odor of alcohol on an **employee's** breath is "a sufficient basis upon which to assess **discipline**" (Third Division Award 24873).

Accordingly we find the Investigation produced substantial probative evidence to support Carrier's conclusion that Claimant violated Rule G as well as Rule D.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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