

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Rail Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation - Northern Division (AMTRAK):

On behalf of Assistant Signal Foreman E. Parkhurst for payment of all time lost from June 16, 1987, until his return in April, 1988, account of the Carrier violated the current Signalmen's Agreement, as amended, when it did not afford him a fair and impartial hearing and failed to find him guilty as charged, during investigation held on July 1, 1987." Carrier file NEC-BRS-SD-282D.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, an Assistant Signal Foreman with four years of service, was dismissed by Carrier on July 10, 1987, following an Investigation on charges that he violated Rules G and L while on duty on June 16, 1987. Rule G prohibits employees from possessing, using or being under the influence of alcoholic beverages, intoxicants, etc. while on duty, reporting for duty or subject to duty. Rule L requires employees to obey instructions, directions and orders from supervisory personnel.

The Hearing disclosed that Claimant, while working in a tunnel, was approached by two Carrier officials who observed that his eyes were red and glassy and smelled an odor of alcohol on his breath. The officers, suspecting him of being under the influence of alcohol, directed Claimant to accompany them for medical testing to determine the presence of alcohol in his body. When Claimant refused to submit to testing, he was removed from service.

This Board has regularly held that the odor of alcohol on an employee's breath is sufficient to support the assessment of discipline. See Third Division Award 24873, for example. If Claimant felt that his condition was attributable to fumes in the tunnel, as he testified at his Hearing, he should have complied with the Carrier's direction to submit to medical testing. As the Carrier had cause to issue such a direction, Claimant's failure to submit to testing was not only imprudent, but insubordinate as well. Accordingly, we find that the charges against Claimant were proven.

The Carrier reinstated Claimant to service in April 1988, after he had been out of service for nine months. Under the circumstances, a suspension of this length was not unreasonable.

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 25th day of September 1989.