

**Award No. 13117**

**Docket No. TE-14904**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Don Hamilton, Referee**

**PARTIES TO DISPUTE:**

**UNITED STEELWORKERS OF AMERICA (AFL-CIO)  
LOCAL UNION NO. 1913**

**UNION RAILROAD COMPANY**

**STATEMENT OF CLAIM:** 1. Operator C. E. Swenson be restored to service on the Union Railroad with all rights unimpaired.

2. Operator C. E. Swenson be compensated for all earnings lost since March 6, 1954, when determination was made by Company Doctor that Mr. Swenson was able to return to service on the Union Railroad.

**OPINION OF BOARD:** This claim involves the discipline case of Tower Operator C. E. Swenson. At the outset, it should be noted that this Board exercises a rather limited scope of review in cases of this nature. As a general rule we will not overturn the discretion and judgment of the Carrier unless there is proof of an abuse of that discretion.

The employes ask us to reverse the findings of the Carrier, on the theory that such findings were based on insufficient evidence. It is not our function to weigh the evidence and then determine if our decision would be the same as that reached by the Carrier. But rather, it is for us to look at the record and decide if the evidence is sufficient, even if disputed, to warrant the decision made by the Carrier.

The Carrier had before it the testimony of four witnesses on the scene, who said they smelled alcohol on Claimant's breath. There were witnesses who testified that Claimant's speech was incoherent and that he had to be assisted when he walked. Claimant admitted drinking beer the night before this incident.

It would therefore seem to us, that Carrier had enough evidence to substantiate its findings, and that we should not disturb these findings even though we might have decided differently had we have been sitting in judgment of the evidence on the property. There are sufficient facts, present in this case, to affirm the decision of the Carrier.

Having found as it did, Carrier was justified in examining Claimant's past record and in considering his two prior suspensions and two previous reprimands in assessing the penalty in this violation.

The penalty imposed in the disciplinary action does not appear to be arbitrary or capricious and is not an abuse of discretion.

**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.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1964.