

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20929  
Docket Number CL-20845

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
PARTIES TO DISPUTE: (  
( Robert W. Blanchette, Richard C. Bond, and John H.  
( McArthur, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7574) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal, later reduced to a suspension, on Odessa Winn, Usher at the Pennsylvania Station, Penn Central Railroad at New York City, New York.

(b) Claimant Odessa Winn's record be cleared of the charges brought against him on July 24, 1973.

(c) Claimant Odessa Winn be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant was employed as an Usher at Pennsylvania Station, New York City. On July 24, 1973 he was working his regular assignment (3:15 P.M. to 11:45 P.M.) but was removed from service at 4:45 P.M. for an alleged Violation of "Rule 10".

On July 25, 1973 Claimant was advised to appear for an investigation for "Being under the influence of an intoxicant on July 24".

Subsequent to investigation, Claimant was dismissed from service. During the appellate procedures, Claimant was restored to service, "solely as a matter of leniency".

Carrier produced two (2) witnesses to demonstrate that on the day in question, certain indications of improper job performance caused them to observe the Claimant.

Although neither observed him consuming any alcoholic beverages (and the record is rather unclear that either formulated an opinion that he could not have completed his tour of duty) they testified as to the classic indicia of a person under the influence, i.e. some degree of slurred speech, glassy eyes, unsteady gait and an odor of alcohol.

Claimant denies that he was under the influence. He states that he was performing work on his 9th consecutive day, and was quite tired - which could account for certain of his physical manifestations.

It is conceded that when Claimant was being withheld from service he specifically asked to be taken to a doctor regarding the accusations against him. Carrier officials denied the request, and the record is silent as to the reason for such denial.

The Organization has raised certain questions concerning the propriety of withholding Claimant from service pending investigation. Our disposition of the dispute on the merits makes it unnecessary for us to rule on that contention.

The Board is of the view that Carrier officials should have attempted to comply with Claimant's request to visit a medical facility. In this regard, Carrier has stated, at page 10 of its Ex Parte Submission:

"Carrier asserts however, although an examination by a medical doctor may have conclusively determined whether or not Claimant was under the influence of intoxicating beverages, such a procedure is not required by the Schedule Agreement, nor is medical proof of intoxication required by the Board in order to support a carrier's findings in Rule G cases. As mentioned in the preceding paragraph, laymen are entirely competent to make a determination as to whether or not a person is intoxicated."

Although Claimant was charged with a "Rule 10" violation, rather than Rule G, the two Rules are similar in concept, which fact is obviously recognized by Carrier inasmuch as it referred to Rule G in its above cited statement. It is interesting to note that Carrier's Rule G .b. states:

"There is no objection from a company standpoint to a medical examination; in fact, in areas where facilities are readily available, there should be such an examination unless the employee refuses. There is also no objection to a sobriety test if it can be arranged and the employee will submit to it. The employee should not be denied a sobriety test if he request one and it is possible to arrange for one." (underscoring supplied).

We have reviewed cited Awards (including those authored by this Referee) concerning the quantum of proof necessary in these types of cases. Surely, as we noted in Award 20100, laymen are competent to testify as to

outward manifestations, physical actions and activities, and conclusions of intoxication (See also Award 20250). We do not depart, in any manner, from that conclusion. However, we feel that the facts of record in this dispute raise certain other considerations. While, clearly, this Claimant was not charged with a Rule G violation, nonetheless, Rule G .b., cited above, suggests that Carrier is not a stranger to the concepts of providing a sobriety test, if requested.

The unexplained refusal, on the part of Carrier's witness, to allow Claimant an examination and to obtain a blood alcohol content test certainly lends a degree of credence to Claimant's denial of wrong doing.

We have noted Award 19180, cited by Carrier, which stated that medical evidence is not essential to a finding of intoxication. We agree with that conclusion, but reliance on Award 19180 begs the question. In that dispute, the Organization asserted that Carrier erred when it failed to send Claimant to the first aid station. There is no indication that Claimant, in that dispute, requested - at the time of the accusation - that he be given medical verification of his condition.

We stress that the resolution of this dispute must, of necessity, be controlled by its own individual factual circumstances. Here, Claimant was accused, during normal daylight hours, in a busy metropolitan area, of being under the influence of intoxicants. At that precise time he challenged the statement and made his reasonable request. We feel that Carrier officials had a duty to attempt to comply. If medical attention was not reasonably available, then - of course - other considerations would control; But here, we are confronted solely with an unexplained refusal to assist in obtaining specific scientific indication of the Claimant's condition.

We will sustain the claim and Claimant shall be reimbursed in accordance with Rule 6-A-1 (h) of the agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.