

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24294
Docket Number MW-24435

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Equipment Operator J. W. Mason for allegedly 'being under the influence of alcohol and conduct unbecoming an employe' on July 25, 1980 was without just and sufficient cause (System File C-D-1013/MG-2932).

(2) The claimant shall now be allowed the benefits prescribed in Agreement Rule 21(e)."

OPINION OF BOARD: At the time of the occurrence giving rise to the claim herein, Claimant, with about seven years of service, was employed as Equipment Operator. He was assigned to Switch Tamping Force 1256, and was working under the supervision of Production Gang Foreman R. G. Pensol and Foreman J. H. Daniels at St. Albans, West Virginia. On July 28, 1980, he was notified to attend investigation on August 7, 1980, charged with:

"... being under the influence of alcohol and conduct unbecoming an employe on duty in the vicinity of East End St. Albans Yard, West Virginia, on or about 8:00 A. M., on Friday, July 25, 1980."

The investigation was postponed and conducted on August 19, 1980. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of Claimant's substantive procedural rights was violated. Claimant was present throughout the investigation and was represented.

In the investigation Production Gang Foreman Pensol testified that Claimant was present at the normal starting time; that he told Claimant "he should stay on the camp - he was in no shape to come out to work". He further testified that Claimant was intoxicated and that "When we first got up that morning, he was sitting out in the car and he had a beer open, and it was all over his breath." He also stated that when Claimant came to the work site, that he was not acting normal. "He was pretty well drunk, especially after he came out to the track where he started to walk, he was pretty staggering." He testified that he did not permit Claimant to perform any duties because he was in no shape to operate a piece of equipment.

Foreman J. H. Daniels testified that from Claimant's looks and actions, he considered him intoxicated and that Claimant told him (Daniels) that he was drunk. Daniels testified further that he instructed Claimant to "go back to the camp cars", but that Claimant did not do so. He also testified that Claimant

used foul and threatening language to him. The Claimant, when questioned, did not deny threatening Foreman Daniels.

Claimant contended that he had not had anything to drink after 12:00 midnight the night before, at which time he had about six beers. "I didn't have enough money to buy any more and get me something to eat the next day." He also contended that his abnormal actions on the date involved were due to "being sleepy".

Based on the entire record, the Board finds that substantial evidence was adduced at the investigation in support of the charge against Claimant, and that the discipline imposed by the Carrier was not arbitrary, capricious or in bad faith. The Board has held in numerous awards that laymen are competent to make a determination of intoxication.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.

