

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24597  
Docket Number MW-24753

Robert Silagi, Referee

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

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

(1) The discipline (ten days overhead suspension) imposed upon Cook D. P. Clark for alleged 'conduct unbecoming an employe' on March 12, 1981 was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File C-D-1123/MG-3123).

(2) The ten days of overhead suspension imposed upon the claimant shall be expunged from his record.

OPINION OF BOARD: Claimant, a cook with 5 years seniority and an unblemished record was charged with creating a disturbance on a train. At the time the incident took place Claimant was working with Carrier's Bridge Force in Muncie, Indiana, although he lived near Richmond, Virginia. Consequently Claimant used Amtrak trains operated by Carrier to travel between the two cities. On the night of March 11, 1981, Claimant was aboard Amtrak Train No. 50 from Muncie to Richmond. An incident occurred late that night. An investigation hearing was conducted at which Carrier's witnesses testified that Claimant had created a disturbance by being boisterous and using loud, profane and vulgar language. However, the testimony of witnesses on behalf of Claimant, in effect, absolved Claimant of any wrong-doing. As best as can be reconstructed from the conflicting testimony the incident happened as follows:

Claimant was riding in the AM - Dinette car. At midnight the female food attendant closed the Food Bar and went into the sleeper where she rests. Claimant also went toward the sleeper. The conductor followed Claimant into the sleeper but the latter was nowhere to be seen. The conductor checked the empty rooms of the sleeper and then, hearing voices coming from an occupied room, he rang the buzzer and knocked on the door. The food attendant answered the door and when questioned denied that anyone was with her. Upon opening the door to the room's toilet, the conductor found Claimant there and requested him to come out. So much is conceded by Claimant.

According to the conductor, at first Claimant refused to leave the room and became abusive, using profanity and vulgar language. The conductor asked Claimant to return to his coach seat but Claimant would only go to the diner. Finally Claimant reached the coach. The conductor asked to see Claimant's ticket. Claimant had none but produced a pass which entitled him to ride at half fare. The conductor demanded the appropriate fare. Claimant refused to pay. In order to avoid any difficulty two of Claimant's fellow workers paid the fare on his behalf.

The conductor testified that Claimant's behavior was influenced by alcohol. The conductor affirmed that Claimant's cursing and abusive language was loud enough to disturb passengers in the sleeping car and in the dining car. The conductor's testimony was, in part, corroborated by the baggageman.

Claimant's witnesses, who were his fellow workers, denied that Claimant used vulgar or profane language, although they admitted that Claimant was loud and argumentative. Claimant's witnesses testified that Claimant's conduct did not disturb passengers on the train; that Claimant was not drunk that both the conductor and Claimant were talking "real loud...both of them were yelling to each other", and that the conductor was causing as much disturbance as Claimant.

Claimant testified that he did not drink on the night in question, that he has ulcers and therefore cannot drink at all; that he obeyed the conductor's instructions and that he did not use profanity or vulgar language.

It is axiomatic that in disciplinary cases the burden is upon the Carrier to prove that the guilty verdict is adequately supported by evidence, Awards 15412; 15582; 16166 and many others. It is not unusual in disciplinary hearings, as happened in the case at bar, that honest witnesses who observed the very same incident, testify as though they saw two different events. The issue then becomes one of credibility. The resolution of credibility is traditionally the province of the trial officer. That is the rule followed by this Board acting as an Appeals Board, Awards 19696 - Rubenstein; 19493 - Devine. The Carrier asserts that the evidence "fully" established Claimant's guilt. This Board is not prepared to go that far, nevertheless there was substantial evidence adequate to support the guilty verdict in view of the trial officer's finding that Claimant had no authority to ride in the sleeper. Had Claimant remained in the coach there would have been no confrontation with the conductor. Accordingly we shall not reverse the Carrier nor shall we disturb the discipline of ten days overhead suspension.

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

That the Agreement was not violated.

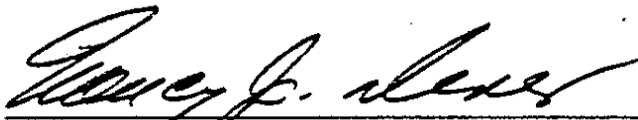
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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this day of 15th day of December 1983.