

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24684
Docket Number CL-24620

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9600)
that:

(a) Carrier violated the rules of the current Clerks' Agreement at Clovis, New Mexico, on July 10, 1980, when it wrongfully discharged D. L. Little from service, and

(b) D. L. Little shall now be reinstated with all his seniority rights, and all other rights thereto unimpaired, and shall be compensated for eight (8) hours' pay at the rate of position held at time of discharge from service for each work day commencing July 10, 1980 and continuing until such time as he is reinstated.

(c) Carrier shall also pay ten per cent (10%) interest per annum on the amounts claimed.

OPINION OF BOARD: D. L. Little, the Claimant, was a janitor at the Carrier's Clovis, New Mexico, facility with seniority since July 17, 1977. As a result of charges and an investigation, he was removed from service for violation of Rule 6, General Rules for the Guidance of Employees. Rule 6 states:

"The use of alcoholic beverages, intoxicants, narcotics, marijuana or other controlled substances by employees subject to duty, or their possession or use while on duty or on Company property, is prohibited.

Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana, or any other controlled substance, or medication (whether or not prescribed by a doctor) that may in any way adversely affect their alertness, coordination, reaction, response or safety."

The Organization protests the Claimant's dismissal on the grounds the record establishes the Hearing Officer prejudged the Grievant and that it failed to support the Carrier's claim Rule 6 was violated by the Claimant.

For the purposes of clarity, the Board finds the record establishes the Claimant did not consume or possess alcoholic beverages while on duty. It further fails to offer evidence the Claimant was subject to duty. Thus, the Carrier has the burden of proving whether or not the Claimant reported for duty at 5:01 A.M., July 8, 1980, under the influence of an intoxicant.

The Organization has expressed concern over the conduct of the Hearing Officer, and, specifically, his statement that all that is required of the Carrier is to show a trace of alcohol in the blood stream in order to justify taking action against an employee as being under the influence of an intoxicant. The Board emphasizes that Rule 6 is clear and unambiguous. It provides the standard for determining if one is under the influence when reporting for duty in a condition, thusly:

"...that may in any way adversely affect their alertness, coordination, reaction, response or safety."

As cited in Third Division Award No. 20000 (Sickles), this Board seeks evidence of impairment. That award, in part, states:

"The degree of impairment is not essential, and the Board will not condone the performance of work by those under even the slightest alcoholic impairment."

As Rule 6 succinctly states, the essential point is the impairment of faculties "that in any way" adversely affects performance on the job. This is what is meant by reporting for duty "under the influence." Correspondingly, an employee who submits to a blood alcohol test which finds a "slight" tracing of alcohol may or may not manifest faculty impairment. That conclusion depends upon the coupling of competent evidence of such impairment along with the test results.

Notwithstanding this clarification, the record in this matter does not affirm we are dealing with a charge based simply upon an employee voluntarily submitting to a blood alcohol test which finds only a slight trace of alcohol in the blood. Herein, the Claimant aroused suspicion by his loud talk and by bumping (hitting) or falling into a waste container. He was asked if he had been drinking and admitted he had done so the night before. He agreed to take a blood alcohol test which found an alcohol level of .089% in his blood stream. The Organization disputes the Carrier's determination that this level of alcohol, found some three hours or more later in the Claimant's blood, impaired his performance in any manner. It further objects to the Hearing Officer's acceptance of testimony dealing with the Claimant's observed behavior and the rejection of testimony by fellow employees to the effect the Claimant acted normally on July 8. Such findings of credibility are reserved for the Hearing Officer and, as we have repeatedly ruled, the Board is in no position to resolve conflicts of evidence.

While the parties are not bound by the statutes of New Mexico dealing with intoxication, the record shows that a blood alcohol level of .10% is thought to be the point an individual is considered legally intoxicated. Both parties refer to the dissipation rate of alcohol and, while there is disagreement over the universality of its application, the Board concludes the Claimant did, in fact, have a higher percentage of alcohol in his blood when he reported for duty. We further find substantial evidence to support the Carrier's conclusion the Claimant did report for duty in a condition which did adversely affect his faculties and constituted being under the influence, as defined by Rule 6.

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

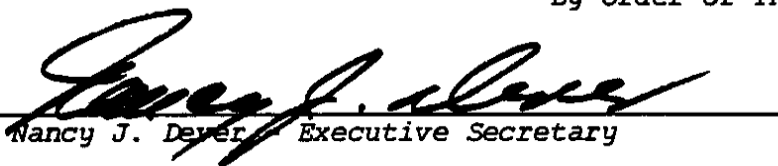
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984