

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25706

Docket Number MW-25726

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation

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

(1) The Carrier violated the Agreement when it dismissed Trackman C. P. Sewell, Jr. on the basis of a trial that was not fair or impartial (System Docket 458D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant, Mr. Charles P. Sewell, Jr., entered Carrier's service on May 8, 1980. On June 9, 1982, Mr. Sewell was personally advised by Mr. J. L. Aviles, Assistant Production Engineer, that he was released from service by a letter dated June 7, 1982. Mr. Aviles also advised Mr. Sewell at that time that a day would be set for a trial and he would be notified by mail concerning it. The Carrier sent a Certified Letter to Mr. Sewell dated June 14, 1982 notifying him to attend a formal trial on June 24, 1982 setting forth the following changes:

"VIOLATION OF AMTRAK RULES OF CONDUCT, RULE
'C', which reads: 'Reporting for work under
the influence of alcoholic beverages or nar-
cotics, or the use of alcoholic beverages while
on or subject to duty or on Company property
is prohibited.

"VIOLATION OF AMTRAK RULES OF CONDUCT, RULE
'J', which reads in part: 'Courteous conduct
is required of all employees in their dealing
with the public, their subordinates and each
other...

"VIOLATION OF AMTRAK RULES OF CONDUCT, RULE
'O', which reads in part: 'Employees and
family members traveling on a free or reduced
rate basis shall neither dress nor conduct
themselves in a manner which could embarrass
the Company, or is objectionable to other
passengers or which hinders other Company
employees from properly performing their
duties...

"SPECIFICATION: In that on June 6, 1982, you had used alcohol and narcotics on Company property immediately prior to reporting for your tour of duty to begin at 11:00 PM in Baltimore, Maryland. You also had a weapon in you possession on Company property while transporting yourself on Train 177 and became discourteous and loud on the train and in the police office in Baltimore."

The Trial was held on June 24, 1982. By notice dated July 6, 1982, Mr. Sewell was informed that he was assessed the discipline of "Immediate dismissal in all capacities". The Organization appealed the discipline, and the matter is now properly before this Board.

The Carrier's June 14, 1982 Certified Mail letter to Mr. Sewell, sent 10 days in advance of the Trial date, fulfilled the Carrier's obligation under Rule 71 to give advance notice of trial to the accused. Certified Mail was the usual manner in which Notice of Trials are given employees on this property. The Notice was timely sent. And no statement or other evidence of record indicates that Mr. Sewell's failure to pick up the Notice until June 30, 1982 was due to the Postal Service's fault or the fault of the Carrier. Indeed Mr. Sewell was specifically informed by Mr. Aviles on June 9, 1982 that he would be given a Notice of the Trial date by mail. In the context of the facts of this case, Mr. Sewell was given proper notice in accordance with Rule 71.

At the Trial, and without any prior written request, the Organization requested a postponement due to the fact of Mr. Sewell's absence. The Organization also sent a Mailgram prior to the trial dated June 22, 1982 stating its view that it was necessary to have members of the Train Crew and Passenger Service Crew at the Trial. The Conducting Officer denied the request for a postponement due to Mr. Sewell's absence since Mr. Sewell did not contact his representative or the Carrier seeking a postponement. The Conducting Officer did offer to grant a postponement if the Organization intended to call certain employees as witnesses, which offer was not acted upon by the Organization. He stated in part as follows:

"...Mr. Sewell was notified of this trial and we entered the trial notice into the transcript as Exhibit #1. In the last sentence it reads 'you may also be accompanied by any witnesses you may choose in your behalf without any expense to the Company.' Our information and the reports of the incident came from the police. Mr. Aviles was the charging officer. I have called these individuals to testify at this trial today. If you would like to call anyone, you may do so. I see no reason for the company to call these witnesses. If you would like to call them and you would like to request a postponement so you may call them, you will be so granted". (Emphasis added)

We find that a basis does not exist in the record before this Board to set aside the discipline in this case because of the Conducting Officer's handling of the requests for postponements. No request was made in writing in accordance with Rule 7(a) and, the Conducting Officer did offer to grant a postponement so that the Organization could call further witnesses, if desired, which offer was not acted upon.

We have reviewed all the contentions of the Organization that assert procedural error, and we are compelled to reject these contentions.

We find that substantial evidence of record supports the Carrier's finding that Mr. Sewell was responsible for violating Rules "C" on June 6, 1982 in using alcohol and marijuana on an Amtrak train prior to reporting for duty on his assignment at the B & P Interlocking at the north end of the B & P Tunnel where he was scheduled to provide flag protection for contractors in the tunnel. The testimony of Mr. Aviles and Mr. Nunnelee relates Mr. Sewell's admission to having drunk a beer and smoked a marijuana cigarette prior to reporting to duty. The evidence also showed that Mr. Sewell had a can of beer in his bag. The testimony of Police Officers Helton and Hurd constitute substantial evidence of record that Mr. Sewell was in violation of Rule "J" and "O".

We find that the discipline of dismissal is neither arbitrary, capricious nor excessive in this case. We will deny this Claim.

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

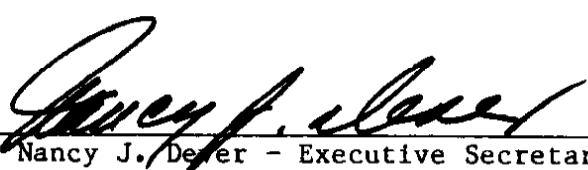
That the Agreement was not violated.

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 14th day of November 1985.