

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25832
Docket Number TD-25892

John E. Cloney, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Seaboard System Railroad

STATEMENT OF CLAIM:

"... it is the claim of this organization that Mr. Parsons be restored to service, his record cleared, and he be afforded the relief specified in Article IX(c)." [Re 90-days suspension, Carrier file 10-9-(83-13) E5]

OPINION OF BOARD: Claimant Parsons was "charged with responsibility in connection with being under the influence of intoxicants while working the second shift branch line train dispatcher's position, April 22, 1983 approximately 3:45 P.M."

Claimant worked the second trick which is 2:59 P.M. until 10:59 P.M. He states he was relieved at about 10:25 P.M. on Thursday, April 21 and went directly home. He got up at 6:00 A.M. on April 22. While working with his son-in-law he had some vodka and orange juice between 7:15 A.M. and 8:15 A.M. He then returned home, showered, napped until 12:30, had lunch and did some work in his home until reporting to work. He relieved the first trick Dispatcher at about 2:15 P.M. He denies having any alcohol after 8:15 A.M.

Assistant Superintendent Hattaway stated he detected alcohol on Claimant's breath when he went to Claimant's office at about 3:35 P.M. He questioned Claimant who replied he "had 2 or 3 drinks that morning". Hattaway relieved him from duty pending investigation and offered to arrange a ride home. Claimant asked to speak to Superintendent Macon. In Macon's office Claimant related why he was being relieved and told Macon he had some drinks this morning.

Hattaway testified he had no reason to think Claimant had been drinking prior to detecting the odor. He had received no complaints regarding Claimant's performance of his duties before relieving him nor had he had any since. He did not "note . . . (claimant) walking unorthodox (sic) or slurry voice or anything other than the smell of alcohol". He did say Claimant's eyes were bloodshot and his face had a red, flushed appearance. Hattaway stated Claimant's eyes were bloodshot on the day of the Hearing also but further questioning regarding Claimant's appearance was stopped by the Hearing Officer.

During the course of the Hearing Rule G was read into the record.
This Rule prohibits:

"The use of intoxicants . . . by an employee subject
to duty or their possession or use while on duty
Employees must not report for duty under the influence
of any medication"

At the Hearing Claimant testified his understanding is that he is not
considered available for duty for 15 hours after completing a shift.

On May 31, 1983 Claimant was informed that "As a result of
investigation . . . it was found that you are guilty of the charges"

Carrier argues Hattaway's having detected an odor of alcohol plus
Claimant's admission is conclusive evidence of use of alcohol prior to
reporting for duty. It views Claimant's admission as substantiating
Hattaway's testimony. Further it contends the admitted use, plus the odor,
plus bloodshot eyes and flushed face all show Claimant was "under the
influence of intoxicants."

Carrier argues "the degree of impairment is not essential" (citing
Award 15023) and cites cases holding use of intoxicants prior to reporting
for duty is a serious matter.

The Organization insists that Carrier has not met its burden of
proving its allegations. A review of the evidence adduced at the Hearing
persuades us the Organization is correct and this Claim should be sustained.
In sustaining the Claim we are not disregarding the principle that
credibility resolutions are to be made by others - not us. We do not
understand Carrier's findings to rest upon a credibility resolution, nor do
we find substantial evidence upon which to base a conclusion that Claimant
was "under the influence of intoxicants while working the second shift"
The only evidence consisted of Hattaway's statements regarding the odor of
alcohol. In First Division Award 15028 it was found that "The only evidence
adduced at the hearing to support the charges . . . was testimony that the
odor of intoxicants could be detected on his breath . . . we find such
evidence to be insufficient"

Although Carrier relies on Claimant's admissions they must be viewed in their proper perspective. That is, according to Claimant he had some vodka six hours before reporting to duty, at a time when he was not "subject to duty" and prior to taking a lengthy nap and eating a meal. Hattaway reported no speech difficulty or other common manifestation of intoxication. There is no evidence Claimant, who had been on the job well over an hour, performed his duties improperly. There is, in short, no substantial evidence that Claimant was under the influence of alcohol, even though he may have given off its odor. Nor, given the timing, can he be said to have used intoxicants while "subject to duty".

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

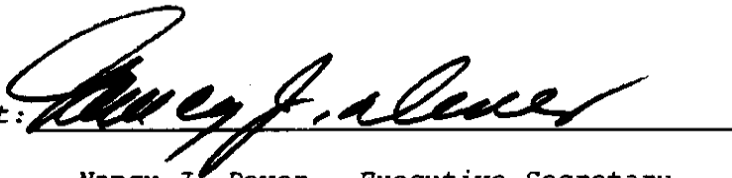
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.