

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26031

Docket Number MW-26008

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Chesapeake & Ohio Railway Company (Northern Region
(excluding Hocking Division)

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

1. The thirty (30) working days of suspension imposed upon Mr. R. L. Hobson for allegedly 'being under the influence of intoxicants while on duty at Grand Blanc, Michigan at approximately 3:15 p.m. on Thursday, May 19, 1983.' was arbitrary, capricious, without just cause and on the basis of unproven charges (System File C-D-1845/MG-4143).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was notified by letter of May 25, 1983, that he was "charged with responsibility for being under the influence of intoxicants while on duty at Grand Blanc, Michigan, at approximately 3:15 p.m. on Thursday, May 19, 1983". The Hearing was held on June 15, 1983 and the Claimant was notified thereafter that he had been found guilty and was suspended for thirty (30) days.

The Organization argues on property that the transcript does not support the charges. It points to the fact that the Claimant had worked in the rain, argued with Mr. Newsome and based on that argument, Bud Crawford, Claimant's Foreman, believed the Claimant was under the influence. It notes that Mr. John Crawford who worked that day with the Claimant testified that the Claimant was not under the influence. Claimant denies the use of intoxicants.

The Carrier points out that the testimony supports the finding of guilt. It notes that both Mr. Newsome and Mr. Bud Crawford state for the record that Claimant was intoxicated. Carrier notes that both men called the Assistant Supervisor that night and advised him of their positions. It further notes that both Mr. Parker and Mr. Koelsh indicated slurred speech.

A careful review of the record shows the existence of both contradictory testimony and the question of the credibility of witnesses. By long established precedent this Board in its appellate function will not resolve such conflicts (Third Division Awards 24533, 24989, 24812 and 25151).

In considering the testimony relating to the alleged offense at bar this Board finds substantial evidence present to support Carrier's finding of guilt. A review of the transcript evidences comments by Messrs. Newsome, Crawford, Parker and Koelsh that the Claimant's behaviors were abnormal. The Organization contends that such behaviors were due to a day of working in the rain and not evidence of intoxication. Yet the record shows the Claimant bumped a trash can with his truck, engaged in a verbal exchange with Mr. Newsome and appeared to be intoxicated to not only Mr. Newsome, but also to Mr. Bud Crawford and Mr. Parker. In addition, even discounting Mr. Newsome's testimony, both Mr. Parker and Mr. Koelsh indicated that the Claimant's speech was slurred. This Board has ruled on numerous occasion that laymen can judge outward indications of intoxication (see Third Division Awards 20250 and 21138).

In the whole of this record, the Board finds that the Carrier has met its burden of proof. The record as developed on property shows sufficient probative evidence to substantiate the Claimant's guilt in the charge of being under the influence of intoxicants. As to the imposed discipline, there is no basis in the record for this Board to disturb the Carrier's action in this case (Third Division Awards 22797 and 21236).

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 28th day of May 1986.

