

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The thirty (30) calendar days of suspension imposed upon Trackman D. J. Shine for alleged violation of Rule of Conduct 'C' and Safety Rule 4002 on March 20, 1984 was arbitrary, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-886D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On March 21, 1984, Claimant was notified to appear for a trial on March 26, 1984, in connection with the following charges:

"Violation of the following Amtrak rules:

Rule of Conduct 'C' which reads: 'Reporting for work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited.

Safety Rule 4002 which reads in part: 'Narcotic medication, controlled drugs and/or alcoholic beverage must not be used by, or be in the possession of any employee while on duty or within 8 hours before reporting for duty...' in that while on duty at Brill Interlocking on March 20, 1984, at approximately 9:00 PM, you were observed to have the strong smell of fresh alcohol on your breath."

The trial was held as scheduled on March 26, 1984. Subsequently, on April 6, 1984, the Claimant was assessed the discipline now on appeal before the Board. The Claimant resigned effective April 8, 1984.

After reviewing the record, the Board concludes there is substantial evidence to support the charges against the Claimant. This consisted of testimony of two witnesses who indicated they detected the strong odor of alcohol on the Claimant's breath along with unusually belligerent behavior. The hearing officer found this testimony credible and probative. There is no basis to disturb these findings.

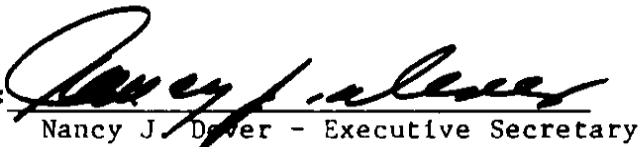
Under similar circumstances, the Board has upheld discipline, including dismissal. The Carrier is not required to produce a blood test to verify a supervisor's otherwise credible and probative observations as to whether someone is under the influence of alcohol. Moreover we find no basis to the argument that the Claimant failed to receive a fair and impartial hearing.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.