

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 6

Docket No. NEC-BMWE-SD-1444D

PARTIES: Brotherhood of Maintenance of Way Employees  
TO :  
DISPUTE: Amtrak

FINDINGS:

On November 18, 1985, Claimant Vincent P. Graham was notified by the Carrier that a hearing would be held into the allegation that he was observed by his superiors on November 14, 1985, to be under the influence of intoxicants and with the odor of alcohol on his breath. The Claimant was charged with violation of Rule G and Safety Rule 4002, which state:

Violation of Rule G of Amtrak Rules of Conduct which states, "Employees subject to duty, reporting for duty, or while on duty are prohibited from possessing, using, or being under the influence of alcoholic beverages, intoxicants, narcotics, or other mood changing substances, including medication, whose use may cause drowsiness or impair the employee's responsiveness."

Violation of Safety Rule 4002 which states, "Narcotic medication, controlled drugs, and/or alcoholic beverages must not be used by or be in the possession of any employee while on duty or within (8) eight hours before reporting for duty."

After a hearing on January 7, 1986, Claimant was found guilty of the offenses with which he was charged and dismissed from the service, effective January 21, 1986.

The Organization contends that the Carrier has not met its burden of proof that Claimant was under the influence of alcohol when he reported for work on the day in question. The Organization argues

that the blood alcohol test results really do not indicate that Claimant was still under the influence, although he admitted consuming a quart of gin late the night before. Finally, the Organization contends that the other behavioral characteristics which the Carrier contends support its allegation that Claimant was intoxicated are really the result of brain surgery performed on the Claimant. Finally, the Organization contends that the Claimant was experiencing the effects of alcoholism and should not be held responsible for his conduct.

The Carrier argues that three Carrier officers personally observed the Claimant to be under the influence. The witnesses testified that Claimant was staggering, unstable, had bloodshot eyes, had the odor of alcohol on his breath, and exhibited slurred speech. Moreover, Carrier points to the admissions of the Claimant as to his drinking an excessive amount of alcohol the evening before, as well as his blood alcohol level, which registered .37 grams per deciliter, as further evidence that the alcohol in Claimant's system was responsible for his unusual behavior on the day in question. The Carrier contends that the evidence is clear that Claimant was under the influence of alcohol while at work on the date in question, and the claim should be denied.

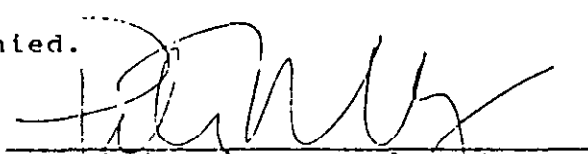
This Board has reviewed the evidence and testimony in the record, and we find that there is sufficient evidence to support the Carrier's finding that the Claimant was guilty of the offenses with which he was charged. The testimony of the three supervisors as to their observations plus the blood test results and the admissions of the Claimant all reflect a man who was severely under the influence of

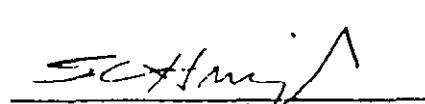
alcohol while at work. Obviously, the Carrier could impose discipline for that behavior.

Once this Board has determined that the guilty finding was appropriate, we next turn our attention to the type of discipline imposed. This Board will not set aside discipline unless a Carrier acted unreasonably, arbitrarily, or capriciously. The Claimant in this case had, six months previous to this incident, been suspended for 60 days for reporting to work under the influence of alcohol. Claimant apparently did not learn his lesson from that discipline, and therefore the Carrier had every right to discharge him on this occasion.

AWARD:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Union Member

Date: 12-30-86