

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 1
Docket No. NEC-BMWE-SD-1243D

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

FINDINGS:

On February 28, 1985, Claimant R. Adams received notice that he was being held out of service for allegedly appearing to be under the influence of alcohol while having a conversation with his supervisor. On March 8, 1985, Claimant was notified to appear for trial in connection with the following charge:

Violation of NRPC Rules of Conduct Rule "C," that part of which reads . . . " . . . use of alcoholic beverages while on or subject to duty . . . is prohibited."

Violation of Amtrak Maintenance of Way Employees Safety Rules and Instructions Rule 4002, that part which reads . . . " . . . alcoholic beverage must not be used by . . . any employee while on duty or within 8 hours before reporting for duty."

Specification: In that on Thursday, February 28, 1985, at approximately 7 p.m. while having a conversation with Supervisor Wayne Weszka, you appeared to be under the influence of alcohol.

An investigation was held on March 14, 1985. As a result of that hearing, Claimant was assessed a discipline of a 15-day suspension. The Organization appealed the finding.

The Organization contends that there was insufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. The Organization points out that the Claimant even offered to take a blood test to prove his innocence, and such an action is not that of a guilty party.

The Carrier contends that it has met the required burden of proof in that each Carrier witness proffered clear and concise testimony that there was an odor of alcohol on the Claimant's breath and that the Claimant acted loud and boisterous. The Carrier contends that the Claimant was not given a blood test because of the unavailability of a medical facility at the late hour of the incident.

This Board has reviewed the evidence and testimony in this case, and we find that there is not sufficient evidence in the record to sustain the hearing officer's finding of guilty of the offenses with which the Claimant was charged.

First of all, there is absolutely no evidence that the Claimant used alcoholic beverages while on duty or subject to duty; and, therefore, the Carrier has obviously not met its burden of proof with respect to Conduct Rule "C."

With respect to the charge relating to use within eight hours prior to reporting for duty, i.e., Rule 4002, this Board also finds that there is insufficient evidence to support any finding that the Claimant violated that rule. The only testimony presented by the Carrier relating to the alleged alcohol use was the testimony of the three Carrier witnesses that Claimant's breath smelled like alcohol and that he was acting loud and boisterous. However, the facts are un rebutted that Claimant was speaking to the management representatives concerning what he considered to be a shortage in his paycheck. That adequately explains his behavior that was less than calm. Moreover, the testimony regarding the smell of alcohol was insufficient. One witness even volunteered that he was not an expert and he might be wrong. Also, there was no testimony that the

Claimant exhibited any of the other behavioral characteristics of drunkenness, such as slurred speech, bloodshot eyes, or unsteady gait. Finally, the Claimant offered to take a blood test to demonstrate that he was not under the influence and went voluntarily to the hospital to take the test. That hardly is the action of a man who is guilty of the offense of being under the influence of alcohol.

Since the Carrier bears the burden of proof and there is insufficient evidence of wrongdoing, the claim must be sustained.

AWARD:

Claim sustained.

T. R. M. 12/30/86
Chairman, Neutral Member

SC 4/11/87
Carrier Member

J. D. D. 12/30/86
Union Member

Date: 12-30-86