

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
"AUTHORITY"

vs.

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES
"ORGANIZATION"

AWARD NO. 23

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-87-7-F12) that:

The discipline assessed Track General Helper W. Crippen was without just and sufficient cause in an arbitrary and capricious manner.

REMEDY:

Claimant, W. Crippen, shall be compensated for all lost wages, including overtime, on account of this discipline, and his record shall be expunged of any reference to this incident.

OPINION OF THE BOARD

Claimant, W. Crippen, was ultimately given a three day suspension by the Authority for alleged refusal/failure to perform assigned work.

The facts in this matter are as follows. On June 9, 1987, the Claimant was working under the supervision of Fred Brinkley. Brinkley instructed the Claimant to first assist in moving, then assist in operating, the "nutter machine", which is a machine designed to tighten or loosen nuts. According to Brinkley, the Claimant refused to either assist moving or operating the

machine. Brinkley therefore told the Claimant that he would assess him discipline for not following orders.

The Authority originally issued the Claimant a five day suspension. The Organization grieved the matter, and during the course of the grievance procedure the Authority reduced the discipline to a three day suspension. The Organization continued to assert that no discipline was appropriate, and placed the matter before this Board.

The Authority maintains that the Claimant was properly disciplined for his failure to perform the assignment of moving and operating the nutter machine. According to the Authority, the Claimant was fully qualified to perform these tasks.

The Organization contends that any consideration of the Claimant's alleged failure to move the nutter machine is improper, as at no time prior to the hearing before this Board was the Claimant or Organization informed that the charge involved movement of the machine. Concerning operation of the nutter machine, the Organization contends that the Authority has not met its burden of showing that the Claimant was qualified to perform work on the machine, as required by Work Rule 35 and Section 304 of the Collective Bargaining Agreement, which provides that employees must pass designated qualifications in the form of written and/or performance tests prior to performing the duties of a specific position. Finally, the Organization asserts that the Carrier has failed to prove that the Claimant was guilty of any misconduct on June 9, 1987, but was instead

disciplined for alleged past incidents, as acknowledged by the Authority during the grievance procedure.

Work rules cited by the parties include:

35. Vehicle Operation Restrictions

Employees are permitted to operate only those vehicles and equipment on which they are qualified by the Authority. Employees shall not permit anyone except an authorized employee take over controls of an Authority vehicle.

42. Refusal/Failure to Perform Assigned Work

Refusal and/or failure to perform assigned work is cause for discharge.

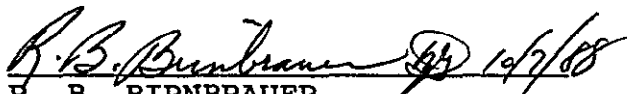
The Board has determined that the claim must be denied.

The Board agrees with the Organization that consideration of the Claimant's alleged failure to move the nutter machine is improper, as that allegation was not made explicit in any of the documentation concerning this matter that was developed during the grievance procedure. The Board has further concluded, however, that considering alone the Claimant's failure to operate the nutter machine when requested, the evidence establishes that a three day suspension was warranted. Brinkley credibly testified that he demonstrated to the Claimant how to operate the machine. There is no evidence in the record that any further instruction was necessary in order to qualify the Claimant for operation of this machine. Moreover, the uncontradicted testimony of Brinkley was that a day or two prior to the date now in question, the Claimant had run the nutter machine and that on June 9 the Claimant said he would run the machine if asked to do so by the other employee on the machine.

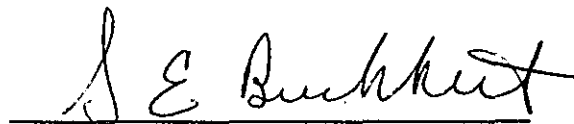
In these circumstances, it appears that it was the Claimant's lack of desire to comply with an order rather than any lack of qualification which motivated him to refuse to operate the nutter machine as requested. In light of the Claimant's attitude, and his prior work record, which contains a number of incidents of discipline, the Organization has done well in having the Claimant's suspension reduced from five to three days.

AWARD

Claim denied.


R. B. BIRNBRAUER
Authority Member


W. E. LA RUE
Organization Member


SCOTT E. BUCHHEIT
Neutral Member