

NATIONAL MEDIATION BOARD, ADMINISTRATOR
SPECIAL BOARD OF ADJUSTMENT NO. 957

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employees

-and-

Southeastern Pennsylvania
Transportation Authority

OPINION AND AWARD
Award No. 260

In accordance with the September 26, 1999 agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board (the Board) to hear and decide the following Claim:

1. The dismissal of Construction Equipment Operator (CEO) Class II P. Sharpe for the number of vehicle incidents during 1999, 2000 and 2001 was without just and sufficient cause, based on unproven charges, excessive and undue punishment and in violation of the Agreement (BMWEE Grievance 01-056-F12).
2. As a consequence of the violations referred to in Part (1), CEO Class II P. Sharpe shall now be reinstated to service and:

"*** compensated for any wage loss suffered or benefit reduction loss suffered when he was unjustly discharged from his CEO-II position on March 30, 2001. All incidents referred in this incident should be completely expunged from his record and he should be immediately returned to his rightfully picked position of CEO-II, IMOS Track Utility Department, Midvale, Pennsylvania." (Employees' Exhibit A-1)

A hearing was held in New York City on November 2, 2001 at

which time the Grievant and representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the relevant procedures that exist between the parties. The Arbitrator's Oath was waived. The Board met in Executive Session after the hearing.

FINDINGS OF FACT AND OPINION OF THE BOARD

A careful review of the record indicates that the Claimant, who was a senior employee, received progressive discipline for a series of vehicular accidents the Grievant had within a relatively short period of time. In particular, the record substantiates that the Grievant received a verbal warning on January 14, 1999 for failing to lower his dump truck and striking a power line; a written warning on March 10, 1999 for backing his vehicle into a train; a written warning on January 16, 2001 for backing his vehicle into a trailer; a one-day suspension on January 21, 2001 for backing his vehicle into a utility pole; and a three-day suspension on February 23, 2001 for hitting a parked car with his vehicle. The Carrier subsequently terminated the Grievant for hitting a parked car with his vehicle on March 29, 2001.

Article IV, Section 401((j) provides, in pertinent part, that:

Progressive discipline will be assessed as follows:

- . Documented Verbal Warning
- . Written warning
- . One-day administrative suspension
- . Three-day suspension (2 days

SBA 957
AWD 260

administrative and 1 day without
pay)
Discharge

The record of discipline and accompanying grievance record reflect that the Carrier agreed to schedule the Grievant for a defensive driving course after the January 21, 2001 incident that led the Carrier to suspend the Grievant for one day. The record in the present matter reveals that the Carrier did not provide the defensive driving course for the Grievant. A defensive driving course constitutes an important opportunity to review certain key aspects of driving and to impress on an individual the importance of operating a vehicle in a safe manner. A defensive driving course would have enabled the Grievant to have a further opportunity to ask questions to a trained driving instructor about special aspects of driving that may arise during the performance of the **Grievant's** job. The failure of the Carrier to provide the defensive driving course deprived the Grievant of the opportunity to obtain such information and to adjust his driving techniques as necessary. A reasonable possibility exists that the Grievant would have benefitted from the defensive driving course and would have made the appropriate adjustments to his driving so that he could have avoided any subsequent accidents.

As a result of the special and unique circumstances set forth in the record, the Carrier did not have just and sufficient cause to terminate the Grievant, who had lengthy seniority, due to the Carrier's failure to provide the Grievant with the

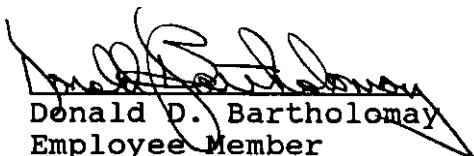
defensive driving course as promised. The Carrier shall provide a defensive driving course for the Grievant. After the Grievant passes the defensive driving course and any normal return to work physical examination, the Carrier shall return the Grievant to work without any **backpay** and with his full seniority intact. The Carrier shall place the Grievant on Step 4 of the progressive discipline process effective March 30, 2001. The Grievant shall be disqualified from serving as a Construction Equipment Operator II until January 1, 2003. Any procedural objections raised by the parties during this proceeding lack merit under the special circumstances set forth in the record.

Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

The Claim is sustained in part and denied in part in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.



Robert L. Douglas
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member
Concurring/Dissenting



Patrick J. Battel
Carrier Member
Concurring/Dissenting

DATED: 1-7-02