

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 105

Docket No. NEC-BMWE-SD-2291D

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

DISPUTE: Claim of the Organization that:

- 1) The Carrier violated Rule 71(a) when it failed to specify the exact rule in which the Claimant was charged and this procedural flaw defeats the Carrier's position and the Claimant should be exonerated of the charge, compensated for all compensation loss due to the discipline and the discipline expunged from the Claimant's record.

FINDINGS:

On Tuesday, July 12, 1988, the Claimant R. Baker, a fuel truck driver for Carrier, was attempting to turn the fuel truck assigned to him around on one of Carrier's access roads and as a result the vehicle went off the embankment and into a tree causing extensive damage to this vehicle. The Claimant was notified to appear for a trial in connection with the following charge:

Violation of the National Railroad Passenger Corporation (Amtrak) Rules of Conduct, NRPC 2525 dated (September, 1985), Rule "B" which reads in part as follows:

"Safety is of first importance in the operation of the railroad and therefore, is the most important of the employees' duties. Employees must understand and comply with safety regulations and practices pertinent to their class or craft of employment. In all circumstances employees should take the safest course of action.

The trial took place on August 25, 1988, and as a result Claimant was assessed discipline of thirty working days suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging his discipline.

This Board has thoroughly reviewed the record in this case and we

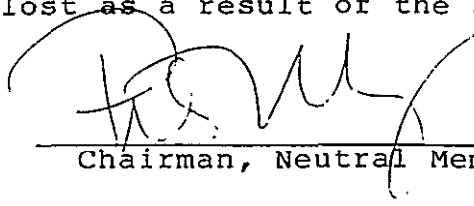
find that the Carrier has not met its burden of proof that the Claimant acted in violation of Rule "B" on the date in question. It is evident that an accident occurred when the Claimant drove his vehicle off an embankment and into a tree causing extensive damage to the vehicle. However, as this Board has ruled in the past, the mere fact that an accident occurred does not mean that the Claimant was in violation of a safety rule.

In fact, the record reveals that even the Carrier representatives were not sure that there were any alternatives for the Claimant in the situation that he was in; also, it is not clear if there was any other way for him to turn around the vehicle or if he was aware of the turn around which was approximately 150 feet away. Finally, there is some evidence that the brakes were not operating properly at the time of the incident.

In matters of discipline the Carrier bears the burden of proof. In this case, the Carrier has not met that burden and therefore the claim must be sustained.

Award:

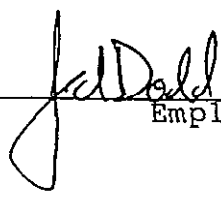
Claim sustained. Claimant is to be made whole for all lost wages and other benefits lost as a result of the suspension.



Chairman, Neutral Member



Carrier Member



Employee Member

Date: 2/22/90