

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 108

Docket No. NEC-BMWE-SD-2396D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

DISPUTE: Claim of the Organization that:

- 1) The dismissal of B & B Assistant Foreman C. W. Lego for alleged violation of Rules F(1), F(2), F(3) and O of Amtrak Rules of Conduct on January 6, 1989, was arbitrary, capricious and an abuse of the Carrier's discretion;
- 2) The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant C.W. Lego was employed as a B & B Assistant Foreman by Carrier. By Notice of Trial dated January 10, 1989, Claimant was directed to attend an investigation concerning the following charges:

"In that on January 6, 1989, at approximately 1:30 a.m. in the vicinity of 3502 Oak Court, Randallstown, MD, you were observed absent from your assigned duties at B & P Tunnel with an Amtrak vehicle. Further, you engaged in verbal threats, harassment, and used profane and vulgar language to Foreman Tom Emge at his personal residence. This incident was also observed by other members of Mr. Emge's community who were disturbed by the loud and boisterous conduct causing Amtrak to be subject to a loss of good will."

The trial was held on March 2, 1989, and as a result Claimant was found guilty and assessed the discipline of dismissal in all capacities. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has thoroughly reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rules

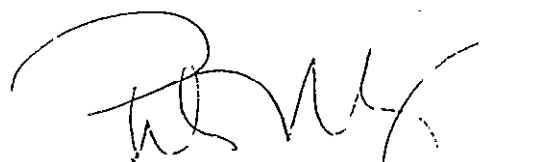
of conduct O, F(1), F(2) and F(3). The record is clear that the Claimant violated those rules when he left his assigned work duties in a company truck, without authorization, and subsequently used threatening and profane language to his foreman at the foreman's residence. Although the Claimant stated that he was under the influence of alcohol in an effort to justify his action, this Board does not find that as an excuse for his behavior.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find the carrier's action to have been unreasonable, arbitrary, or capricious.

Despite the fact that the Claimant had twelve years of seniority with the Carrier, his wrongdoing in this case was so serious that the Carrier's action in terminating his employment cannot be found to be unreasonable, arbitrary or capricious. Therefore, the claim must be denied.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 2/22/90