

SPECIAL BOARD OF ADJUSTMENT NO. 986

CASE NO. 112

DOCKET NO. NEC-BMWE-SD-2510D

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TO :

DISPUTE: NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

DISPUTE: Claim of the System Committee of the Brotherhood:

1. The dismissal of D. L. Ruby for alleged violation of Rules D and K of the Amtrak Rules of Conduct on June 30, 1989, was unwarranted and on the basis of unproven charges.

2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him, and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant D. L. Ruby was employed by the Carrier as a trackman at Baltimore, Maryland.

On July 7, 1989, the Carrier notified the Claimant of several charges brought against him which were later amended by letter dated July 17, 1989, and which read as follows:

Violation of Amtrak Rules of Conduct, Rules D and K

Specification: On June 30, 1989, at approximately 5:00 p.m., in the vicinity of Baltimore Passenger Station, you were observed placing Amtrak material in the trunk of your personal vehicle.

After one postponement, the hearing was held on August 1, 1989. On August 14, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and was assessed discipline of dismissal in all capacities effective immediately. Thereafter, the Organization 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 violations of Amtrak Rules of Conduct D and K. The record is clear, and the Claimant admits, that on the date in question the Claimant placed Amtrak material into the trunk of his personal vehicle. Although after this misappropriation, he then took the wire out of his vehicle and left it on Amtrak property, the Claimant's admission and the testimony of the witnesses is sufficient evidence to support a guilty finding of the offense of misappropriation or theft. This Board rejects the Organization's argument that since the Claimant did not actually remove the wire from the Carrier's property that he was not guilty of the rule violations. We find that his action constitutes misappropriation which is prohibited by the rule.

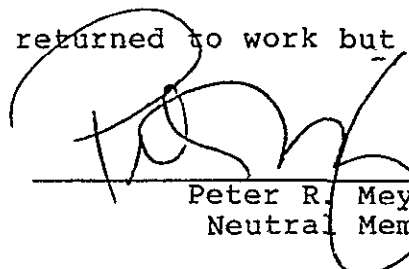
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

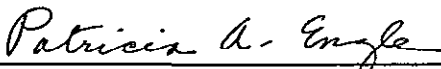
In the case at hand, the Claimant had over 13 years of service with the Carrier. During that time he had only been disciplined for absenteeism. Despite the fact that the offense for which the Claimant was found guilty is extremely serious, this Board believes that the action taken by the Carrier was unreasonable given the length of service of the Claimant and his excellent disciplinary history. Therefore, this Board orders that the Claimant be restored to service as of March 5, 1990, but without back pay. The period that he was out of work should be considered a lengthy suspension, and he should be

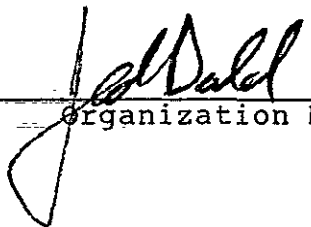
put on notice that any further wrongdoing could lead to discharge.

Award

Claim sustained in part. The discipline of the Claimant is hereby reduced to a suspension terminating March 5, 1990. The Claimant is to be returned to work but without back pay.

  
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Peter R. Meyers  
Neutral Member

  
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Patricia A. Engle  
Carrier Member

  
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J. D. Dald  
Organization Member

Date: 10-1-90