

SPECIAL BOARD OF ADJUSTMENT NO. 986

CASE NO. 113

DOCKET NO. NEC-BMWE-SD-2468D

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 R. R. Rippel, III for alleged violation of Amtrak Rules of Conduct Rules A, B, D and NORAC Operating Rules Rules 830 (paragraph 3) and 997 and Amtrak Safety Rule 4204 (b) on January 16, 1989, was unwarranted.

2. The Carrier has fatally flawed procedurally on several counts; the Carrier has failed to meet the required burden of proof necessary to sustain the charges; and the Carrier has acted viciously and unreasonably towards the Claimant.

3. The Claimant shall be reinstated with full back pay, including all overtime lost, vacation, personal leave, and retirement credits and all seniority rights unimpaired. The entire matter shall be expunged from Claimant's record.

FINDINGS:

Claimant R. R. Rippel, III was employed as a track foreman at Baltimore, Maryland.

On January 18, 1989, the Carrier notified the Claimant of the following charges:

Violation of Amtrak Rules of Conduct A, B, and D

Violation of NORAC Operating Rules 830 (paragraph 3) and 997

Violation of Amtrak Safety Rule 4204 (b)

Specification: In that on Monday, January 16, 1989, at approximately 10:55 p.m., in the vicinity of M.P. 133.3 on No. 3 track, you were operating TC AJ24734 when it collided with TC A58828, causing damage to TC AJ24734 as well as injury to yourself and Mr. M. Shindeldecker.

After several postponements, the formal investigation was completed on

June 7, 1989. On June 22, 1989, the Carrier notified the Claimant that he was 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. On August 18, 1989, the Carrier notified the Organization that the Claimant's discipline was reduced to a suspension and a one-year disqualification as a foreman and Claimant's time out of service to apply without payment for time lost.

This Board has thoroughly reviewed the evidence and testimony in this case and we find that there is not sufficient evidence in the record to support the finding that the Claimant was guilty of the numerous rule violations with which he was charged. Therefore, the Carrier had no basis upon which to impose discipline.

This Board and other boards have held on numerous occasions that the fact that an accident occurs does not necessarily mean that a rule was violated. Moreover, if a carrier charges an employee with rule violations, the burden of proof is upon the carrier to demonstrate with sufficient evidence that those rules were violated.

In the case at hand the Claimant was charged with violations of Rules A, B, D, Operating Rule 830 Paragraph 3, Operating Rule 997, and violation of Amtrak Safety Rule 4204(b). This Board has thoroughly gone through the record evidence in this case and it is clear that the Claimant understood the rules of conduct and therefore there is really no violation of Rules A, B, and D. With respect to the operating rules and safety rule, there is not sufficient evidence to prove that the Claimant violated those rules. There is some evidence that the safety light on the crane was not operating properly, and that there were oily, slick conditions on the tracks. Although this Board is not

convinced that there were brake problems on the Claimant's truck, there is simply not enough evidence in the record to show that the Claimant acted improperly on the night in question.

Since the Carrier has the burden of proof in cases of this kind, and there is not sufficient evidence in the record to support the guilty finding, the claim must be sustained.

Award

Claim sustained. The suspension and disqualification shall be removed from the Claimant's record and he should be made whole for all economic losses resulting from the discipline.



Peter R. Meyers
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Date: 10-1-90