

SPECIAL BOARD OF ADJUSTMENT NO. 986

CASE NO. 116
DOCKET NO. NEC-BMWE-SD-2454D

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 seven-calendar day suspension of Claimant James H. Norris for alleged violation of N.R.P.C. Rules of Conduct Rules B and D on February 8, 1989, was unwarranted.
2. The Carrier has not given the proper consideration to the facts in this case and has acted viciously towards the Claimant.
3. The Claimant should be exonerated of this charge and his record concerning this matter should be expunged.

FINDINGS:

Claimant James H. Norris was employed by the Carrier as a truck driver at Baltimore, Maryland.

On February 21, 1989, the Carrier notified the Claimant of the following charges:

Violation of N.R.P.C. Rules of Conduct Rules B and D

Specification: In that on Wednesday, February 8, 1989, you drove vehicle AA64394 on the access road in the vicinity of MP105-7 in an unsafe manner, not wearing your seat belt contrary to Amtrak Safety Rule and Instruction 4239 (a), (b), and (c), which resulted in personal injuries to yourself and your passenger, Mr. J. Harrison, who was not wearing a seat belt.

After one postponement, the disciplinary investigation was held on March 23, 1989. On April 7, 1989, the Carrier notified the Claimant that he had been found guilty of all charges, excepting that portion relating to Amtrak Safety Rules and Instructions 4239 (a) and (b) and was assessed discipline of a seven-calendar day suspension. On April

17, 1989, the Claimant filed an appeal of his discipline, which appeal was denied by the Carrier on May 26, 1989. Thereafter, the Organization filed a claim on the Claimant's behalf, challenging his suspension.

This Board has 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 failing to wear his seat belt and to make sure that his passenger was wearing his seat belt. The Claimant admitted the wrongdoing in the record.

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 has performed for over 12 years for the Carrier with no previous discipline except for a single letter of reprimand back in 1982. This Board finds that the imposition of a seven day suspension, which apparently includes two extra days for failing to make sure that the Claimant's passenger put on his seat belt, is unreasonable. There is some evidence in the record that the appropriate discipline for this type of offense is a five day suspension. This Board does not find any reason to increase that normal discipline, especially since this Claimant has had a clean disciplinary record for the past 12 years of his employment with the Carrier.

Therefore, this Board hereby orders that the seven day suspension be reduced to a five day suspension. The Claimant should also receive

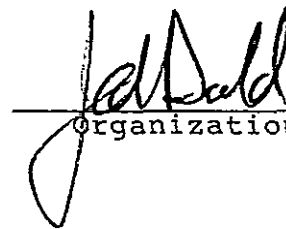
a letter of reprimand notifying him that in the future he must also make sure that his passengers are buckled in.

Award

Claim sustained in part. The seven day suspension is hereby reduced to a five day suspension with a written reprimand. The Claimant is to be made whole for all back pay and other benefits lost as a result of the extra two days of suspension.



Peter R. Meyers
Neutral Member


Carrier Member
Organization Member

16-1-90