

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Case No. 127

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) calendar day suspension of Claimant R. Marino on October 11, 1989, with a discipline date of October 12, 1989, was unwarranted.
2. The Carrier failed to meet the required burden of proof necessary to sustain the charges against the Claimant.
3. The Claimant should be exonerated and should not be disciplined merely because an accident occurred on August 6, 1989. The Claimant's record should be expunged.

FINDINGS:

Claimant Robert Marino was employed by the Carrier as an engineer.

On August 25, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of Rule 4204, Parts B & D of the Amtrak Maintenance of Way Employees Safety Rules and Instructions . . .

Violation of Rule 812 of the National Railroad Passenger Corporation Operating Rules and Instructions . . .

Violation of Rule 997 of the National Railroad Passenger Corporation Operating Rules and Instructions . . .

Specification: In that on August 6, 1989, at approximately 4:11 a.m., while operating Amtrak

Jackson 6500 switch tamper in a south direction on number 3 track at milepost 50.6, you failed to stop the tamper as required, resulting in a collision with Amtrak Ballast Regulator A-14251 which was stopped at this location.

After two postponements, the hearing took place on October 2, 1989. On October 11, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and, effective October 12, 1989, was being assessed discipline of a ten (10) calendar day suspension.

On October 19, 1989, the Claimant appealed his discipline and the Organization followed with a claim on behalf of the Claimant on November 9, 1989. The Organization contends that the Carrier failed to meet the required burden of proof necessary to sustain the charges against the Claimant. The Claimant was not responsible for the accident which occurred on August 6, 1989, but that other mitigating factors contributed to the incident for which the Claimant was unjustly disciplined.

The Carrier maintains that the Claimant was responsible for the collision on August 6, 1989, in that he was aware of the slippery conditions of the rail on that date and failed to follow the rules with respect to the operation of the tamper he was responsible for. The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit. Although the Claimant did not attend his hearing, his representative was present and Claimant was adequately protected.

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 violating the various rules set forth above when he was operating the Tamper on August 6, 1989 and failed to stop and struck a Ballast Regulator which was stopped causing extensive damage and injury to an employee. The record reveals that the equipment was operating properly and therefore, it must have been negligence on the part of the Claimant which caused the accident.

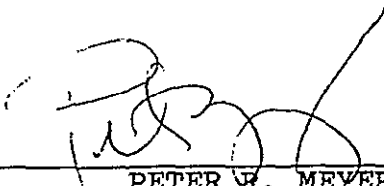
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary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

In the case at hand, Claimant was issued a 10-day suspension for the negligent action of which he was found guilty. Claimant had a previously clean service record and therefore, the 10-day suspension shows that the Carrier took that previous record into consideration. This Board cannot find any reason to amend the action taken by the Carrier. Therefore, the claim must be denied.

AWARD

Claim denied.

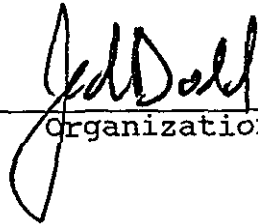
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PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Jedd Doll
Organization Member

Date: 8-8-91