

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 128

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The disqualification as a foreman and thirty (30) days' suspension of Claimant Michael J. Brockmeyer on October 6, 1989, was unwarranted.
2. The Carrier disciplined the Claimant for reasons thought by persons who were not at the job site. There is no evidence that the Claimant did anything wrong the night of the incident.
3. It is not proper for the Carrier to maintain that the Claimant should have noticed something by the way the employee looked some time later after the incident.
4. The Claimant should be exonerated and compensated. His record should be expunged of this matter.

FINDINGS:

Claimant Michael J. Brockmeyer was employed by the Carrier as a foreman.

On August 30, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of NRPC Rules of Conduct Rule A. Obeying the Rules of Conduct . . .

Violation of NRPC Rules of Conduct Rule B. Safety . . .

Violation of NRPC Rules of Conduct Rule C. Responding to Injury . . .

Violation of NRPC Rules of Conduct Rule D. Company

Policies and Procedures . . .

Specification: In that on Tuesday, August 29, 1989, at approximately 2 a.m., in the vicinity of Bowie Interlocking, you failed to take the required action when Marion Tindall, an employee in your charge, sustained a personal injury as a result of an altercation with Mr. Walter Miciche, also an employee in your charge.

Violation of NRPC Rules of Conduct Rule F.
Employee Conduct (3) . . .

Specification: In that you were dishonest when you stated to R. Coleman, Engineer of Track and Structures, that you were not aware of an altercation between Mr. Tindall and Mr. Miciche.

The hearing took place on September 21, 1989. On October 6, 1989, the Carrier notified the Claimant that he had been found guilty of the charges against him, except for violating Rule F-3, and was being assessed discipline of disqualification as a foreman and thirty (30) days' suspension, with the understanding that the Claimant may attempt to requalify in one year.

On October 13, 1989, the Claimant appealed his discipline and the Organization followed, on the Claimant's behalf, with a claim on November 9, 1989, contending that the Claimant was not aware of the incident in question in that he was involved in piloting a burro crane at the time of the occurrence and, hence, could not have committed an infraction of the rules regarding the incident. The Carrier contends that the Claimant was the foreman of both employees involved in the altercation on the date in question and was responsible for supervising them. The parties being unable to resolve the issues, this matter came before this Board.

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 obey the Rules of Conduct set forth above when he was presented with evidence of an altercation and injuries between two employees and Claimant failed to take the required course of action. The record reveals that when one of the employees spoke with the Claimant about the altercation, he was bleeding from the nose and mouth and that Claimant offered no medical attention and took no action in response to the incident.


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 was issued a 30-day suspension and he was disqualified from his position of foreman. Given the past record of the Claimant and the nature of the infraction of which he was found guilty, this Board cannot find that the Carrier acted unreasonably when issued the discipline. Therefore, the claim must be denied.

AWARD

Claim denied.


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PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Joel Dohd
Organization Member

Date: 8-8-91