

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 13

Docket No. NEC-BMWE-SD-1407D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

Claimant H. Ennis, Jr. was notified to appear at a hearing on the charges that Claimant had violated Carrier Rules C, I, and J on September 19, 1985; specifically, Claimant was charged with possession of alcohol while on duty, and physically exposing himself and directing vulgar language to a non-employee passerby while on duty. The hearing was held on October 7, 1985; as a result of the hearing, Claimant was dismissed from service.

The Organization contends that Carrier offered only the uncorroborated testimony of the passerby; Carrier did not meet its burden of proof. The Organization argues that the passerby's testimony was internally inconsistent. The passerby merely stated that Claimant used vulgar language, but the language allegedly used was not entered into the record. The Organization contends that Carrier did not meet its burden of proof on this charge. Moreover, Claimant and two employees working with him on the date in question all testified that barricades and machinery in place as they worked made it impossible for anyone to drive near Claimant that day. The Organization therefore asserts that the alleged events could not have occurred on the date in question; there is insufficient probative evidence to support the imposition of discipline. The Organization contends that the claim should be sustained.

The Carrier argues that the testimony of the passerby was highly

detailed, logical, and straightforward; her testimony established that Claimant is guilty of the misconduct with which he was charged. Carrier points out that the hearing officer can best weigh the credibility of witnesses; the record supports the conclusion that the passerby's testimony was credible. Carrier argues that Claimant's testimony was not credible, but instead contained misinformation, abandoned alibis, and attempts to intimidate Carrier's witness. The Carrier contends that Claimant's proven misconduct constitutes an egregious violation of the Rules; because Carrier provides service to the public, the conduct of its employees is particularly important. The Carrier finally argues that the assessed discipline was fully warranted. The claim should be denied in its entirety.


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 Carrier's charges that the Claimant was in possession of alcohol while on duty and acted in violation of Carrier Rules I and J with his behavior directed toward a non-employee passerby.

The passerby stated that the Claimant used vulgar language directed toward her and further stated that the Claimant acted in an obscene manner. Although she was not specific as to the actual exposure of his body parts, the Claimant's testimony is clear that he turned around, faced her, had his pants undone, and shouted vulgar language toward her. Her testimony was not shaken on cross-examination and is believable. There is no reason that she would fabricate that testimony. Moreover, the record contains additional evidence of the actual language used by the Claimant toward the woman. That type of behavior violates the Carrier's rules, and the Carrier was fully within its rights to impose discipline for it.

Once this Board has determined that there is sufficient evidence in the record to support a finding of guilty, we next turn our attention to the type of discipline imposed. Although the Claimant has no previous record of poor behavior while in the employ of the Carrier, the record also demonstrates that he has only been employed for two and one-half years. The type of behavior engaged in by the Claimant on the date in question is so obnoxious and so serious that this Board cannot find that the Carrier was unreasonable, arbitrary, or capricious when it terminated the Claimant for engaging in that behavior. This Board will not set aside a Carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. Hence, the claim must be denied.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 3-25-87