

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 130

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. Claimant Charles Graves' time held out of service and one (1) year suspension from operating all Amtrak Maintenance of Way Equipment as of October 26, 1989, was unwarranted.
2. The Carrier failed to provide safety protection to the employees involved in the incident on September 21, 1989.
3. The Carrier failed in its burden of proof to show the Claimant purposely caused the accident.
4. The Claimant should be exonerated of the charge, compensated for all earning loss due to the discipline, and the discipline expunged from the Claimant's record.

FINDINGS:

Claimant Charles Graves was employed by the Carrier as an engineer.

On September 22, 1989, the Carrier notified the Claimant that he was being held out of service effective that date pending investigation into the incident he was involved in on September 21, 1989. On September 27, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Charge No. 1:
Violation of NRPC 1908 Safety Rules and
Instructions Rule Nos. 4204(b) and 4175 . . .

Charge No. 2:
Violation of NRPC 2525 (9/85) Amtrak's General

Rules of Conduct, Rule B . . .

Specification No. 1: On Thursday, September 21st, 1989, at approximately 8:45 a.m. at approximate Milepost 77.5 on the Philadelphia Division, you were operating Tie Handler No. N-22520 in a westerly direction when you pinned Mr. Randy L. Jamison, M. W. Repairman, between the Tie Handler No. N-22320, which you were operating and the Scaffier No. N-21508, which Mr. Jamison was working on. Causing serious bodily injuries to Mr. Jamison.

The hearing took place on October 13, 1989. On October 26, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a one (1) year suspension from operating all Amtrak Maintenance of Way Equipment and that the Claimant's time held out of service was to apply to his suspension period.

On October 31, 1989, the Claimant appealed his discipline. The Carrier thereafter notified the Claimant that his appeal was denied on the grounds that the Claimant violated its Safety Rules and Instructions and its Rules of Conduct, causing injury to a fellow employee. The Carrier claims that the Claimant failed to adhere to existing procedures governing safe operations of various machines and equipment.

The Organization filed a claim on the Claimant's behalf on January 15, 1990, contending that the Carrier failed to provide safety protection to the employees involved in the incident on September 21, 1989, which ultimately led to the Claimant's discipline, and that the Carrier failed in its burden of proof to show the Claimant purposely caused the accident. The parties being unable to resolve the issues, this matter came before this Board.

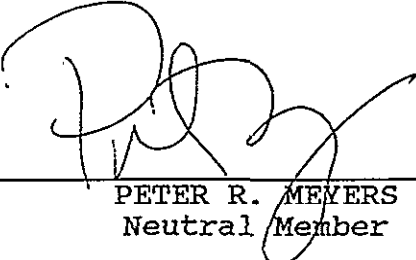
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to maintain a constant lookout while operating his Tie handler in reverse on September 21, 1989. The Failure to properly perform his duties led to the pinning of a another employee between two machines. The record is clear that the Claimant was partially responsible for 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, the Claimant was guilty of a serious failure to perform his duties properly. Given the nature of the offense and the relatively lenient penalty assessed the Claimant for the serious infraction, this Board cannot find any reason to amend the Carrier's action. Therefore, the Claim will be denied.

AWARD

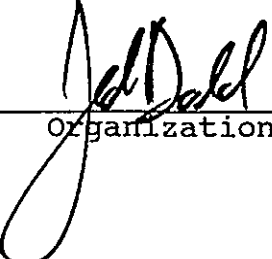
Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Date: 8-8-91