

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 135

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

The ten-day suspension of Machine Operator Donato
River was unwarranted.

FINDINGS:

Claimant Donato Rivera was employed by the Carrier as a
machine operator at its Penn Station in New York.

On October 2, 1989, the Carrier notified the Claimant to
appear for a formal investigation in connection with the
following charges:

Charge: In that on 9/27/89, approximately 8 a.m.,
at Hunter Street Yard, you were in violation of
Amtrak General Rule F, parts 1 and 2 . . .

When, after being given your orders for the day,
you threatened your foreman and acted in a
discourteous manner using profane and vulgar
language, directed toward your foreman.

After two postponements, the hearing took place on February
1, 1990, and reconvened on February 8, 1990. On February 23,
1990, the Carrier notified the Claimant that he had been found
guilty of all charges and was being assessed discipline of a
ten-day suspension with time out of service to apply.

The Organization thereafter filed a claim on behalf of the

Claimant, challenging his suspension. The Carrier denied the claim.

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 although that we are somewhat disconcerted by the fact that the hearing was delayed as long as it was, we do not find that sufficient to dismiss the charges against the Claimant. The record reveals that the long delay was occasioned by the absence of the Carrier's major witness. However, this Board reminds the Carrier that there is a reason why the rules require a prompt hearing. Memories fade and witnesses disappear and if a Claimant is to receive the required fair hearing, the hearing should be held more promptly than the one in this case.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record that the Claimant was guilty of violating Rule F when he threatened his foreman and acted in a discourteous and profane way toward him. Although there was some dispute in the testimony, the hearing officer chose to believe the Carrier's witnesses and this Board is not in the position to second-guess the hearing officer's determination of credibility.

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

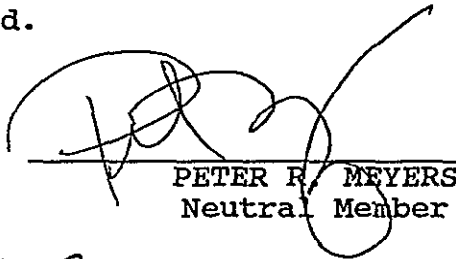
find its action to have been unreasonable, arbitrary, or capricious.

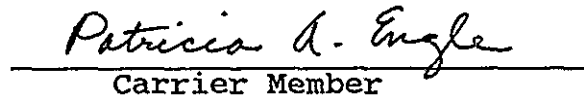
In this case, the Claimant received a ten-day suspension for stating to his supervisor, "Well, if you stop my mother-fucking time, mother-fucker, I going to get you, mother-fucker. I'll take care of you".

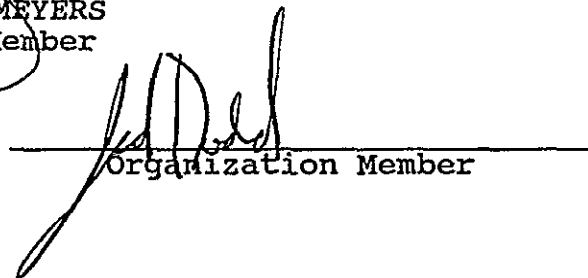
Given the nature of the wrong-doing in this case and the fact that the Claimant had previously received a 30-day suspension for an unrelated matter, this Board cannot find that a ten-day suspension in this case was unreasonable, arbitrary, or capricious. Therefore, the Claim must be denied.

AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Patricia A. Engle
Carrier Member


Organization Member

Dated: 4-29-92