

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 136

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

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

1. The permanent disqualification as an Engineer-Work-Equipment and 90-calendar day suspension (later reduced to a disqualification as Engineer-Work-Equipment for one year, beginning September 6, 1989, and ending on September 6, 1990, and a 30-calendar day suspension) of Maintenance of Way Equipment Operator Val Phillips for alleged failure to operate a ballast regulator in a safe manner was harsh, arbitrary, capricious, without just cause, and in violation of the Agreement.
2. The Claimant should be exonerated of the charge, compensated for all compensation loss due to the discipline, and the discipline expunged from the Claimant's record.

FINDINGS:

Claimant Val Phillips was employed by the Carrier as an equipment operator in Maryland.

On September 8, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Charge: Alleged violation of the National Railroad Passenger Corporation (AMTRAK) Rules of Conduct, (NRPC 2525), dated (9/85), Rule B, Rule K, and alleged violation of the National Railroad Passenger Corporation (AMTRAK) Operating Rules and Instructions (NORAC) effective October 1, 1988, Rule Number 997 . . .

Specification: On Wednesday, September 6, 1989, on track number 2, in Edgewood, Md. at approximately 4:40 a.m., north of Wood interlocking you were operating Ballast Regulator #N14211. The Jackson

Tamper (#A10903) had come to a complete stop at Wood interlocking. The machine you were operating, Ballast Regulator #N14211, failed to stop short of Tamper #A10903, thus colliding with it and causing extensive damage to the A10903 Tamper.

After two postponements, the hearing took place on November 22, 1989. On December 5, 1989, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of a permanent disqualification as an Engineer-Work-Equipment and a 90-calendar day suspension.

The Claimant thereafter appealed his discipline; and on March 5, 1990, the Carrier reduced the discipline to a disqualification as an Engineer-Work-Equipment and 90-calendar day suspension to a disqualification for a period of one year beginning September 6, 1989, and ending on September 6, 1990, and a 30-calendar day suspension with the understanding that, upon expiration of the disqualification period, the Claimant would be required to requalify in NORAC and AMT-2 prior to returning as an Engineer-Work-Equipment.

On April 13, 1990, the Organization filed a claim on the Claimant's behalf claiming that the Carrier's decision was unsatisfactory on the grounds that the Carrier failed in its burden of proof to show that the Claimant violated the rules; the Carrier failed to demonstrate that the braking system on the ballast regulator was functioning properly on the day of the incident; and that the discipline assessed by the Carrier was harsh, arbitrary, capricious, and without just cause.

The Carrier contends that the discipline assessed the

Claimant was commensurate with the serious nature of the proven offense with which the Claimant was charged; that the brakes of the machine the Claimant operated were in proper operating order; and that there is sufficient evidence contained in the record to support the Carrier's finding that the Claimant failed to exercise reasonable care in operating the equipment for which he was responsible.

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 violating Carrier rules when he was responsible for the collision between a ballast regulator and a tamper. That accident cost the Carrier a great deal of money and there is insufficient evidence to support the Organization's claim that the brakes were in bad shape prior to the incident.

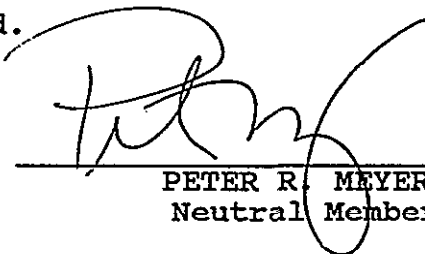
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed by the Carrier. This Board will not set aside a Carrier's imposition of discipline unless we find its action to be unreasonable, arbitrary,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

The record reveals that the Carrier has already reduced the permanent disqualification to a one-year disqualification. In addition, the 90-day suspension was reduced to a 30-day suspension. Consequently, the discipline that the Claimant has

now been assessed is in line with previous discipline of other employees for similar incidents. There is nothing in the record to show that the Claimant has been treated unfairly here. There is no evidence disparate treatment. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Jack Dadd
Organization Member

Dated: 1-15-92