

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 137

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 30-calendar day suspension (later reduced to a 15-calendar day suspension to be held in abeyance for a period of one year) of Maintenance of Way Equipment Operator Val Phillips for alleged failure to comply with an instruction to come to the office and acknowledge receipt of a reduction in position letter was harsh, arbitrary, capricious, without just cause, and in violation of the Agreement.

2. The Claimant should be exonerated of the charge, compensated for total 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 13, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Charges: Alleged violation of the National Railroad Passenger Corporation (Amtrak) Rules of Conduct, (NRPC 2525), dated (9/85), Rule L . . .

Specification: On Tuesday, September 12, 1989, at approximately 1:00 p.m., in Middle River, Maryland, at M.P. 84.0, you were instructed by Project Engineer Mitchell W. Moore to come into the office at the end of the day to sign for a reduction in position letter. At that time, you refused to come in and said, "I'm not going to work as a trackman. Take me in." Upon arrival at the Undercutter Camp Facility in Perryville, Md. at approximately 2:30 p.m., you were again instructed to come into the office wherein you refused to do so.

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 30-calendar day suspension to run concurrently with discipline assessed on File No. 89-412 dated December 5, 1989.

The Claimant thereafter appealed his discipline; and on March 7, 1990, the Carrier offered to reduce the discipline of a 30-calendar day suspension to a 15-day calendar day suspension to be held in abeyance for a period of one year, beginning September 12, 1989, and ending on September 12, 1990, with the understanding that if the Claimant became involved in a similar incident and was found guilty of another Rule L violation within the time frame specified, the 15-day suspension would have to be served in addition to the discipline imposed.

On April 13, 1990, the Organization filed a claim on the Claimant's behalf challenging the discipline.

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. The Carrier contends that there is sufficient evidence contained in the record to support the discipline.

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 although the Claimant did refuse to sign


the form that he was instructed to sign, his action really did not amount to insubordination. The employee was being disciplined for his action as set forth in Case No. 137 of this Board, and his alleged insubordinate behavior was merely a continuation of that discipline. The Carrier seems to recognize that because it issued him a concurrent suspension in this case.

There is no question that the Claimant was upset because he was being given an assignment he did not like. He told the Carrier representative that he did not want to work as a trackman but a thorough review of the record really does not indicate any insubordination on the part of the Claimant.

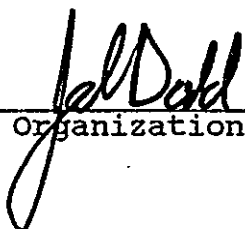
The Claimant, who has been employed by the Carrier for ten (10) years, has been sufficiently disciplined for his wrongdoing in connection with this incident. The record reveals no basis for any further discipline. Therefore, the claim will be sustained.

AWARD

Claim sustained.

  
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PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Patricia A. Engle  
Carrier Member

  
\_\_\_\_\_  
Ed Dadd  
Organization Member

Dated: 1-15-92