

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 140

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

1. The dismissal of Truck Driver J. Williams for alleged violation of Amtrak's General Rules of Conduct D, F, and K on August 1, 1990, was harsh, arbitrary, capricious, without just cause and on the basis of unproven charges (System File NEC-BMWE-SD-2736D).
2. The Claimant shall be reinstated in the Carrier's service with seniority and all other rights unimpaired, he shall have his record cleared of the charges leveled against him and of the discipline imposed upon him, and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant James Williams was employed by the Carrier as a truck driver headquartered at Perryville, Maryland.

On August 8, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Violation of (NRPC 2525)(9/85) Amtrak's General Rules of Conduct, Rule D . . .

Violation of (NRPC 2525)(9/85) Amtrak's General Rules of Conduct, Rule F . . .

Violation of (NRPC 2525)(9/85) Amtrak's General Rules of Conduct, Rule K . . .

Specification No. 1: On Wednesday, August 1st,

1990 at approximately 1:30 p.m. Amtrak Vehicle No. AB-46196 was set up for service and repairs at Perryville, Maryland; however, this vehicle was subsequently unavailable to Mr. Steffy at the designated headquarters of the H.S.S. Gang.

At approximately 6:30 p.m. after having waited all day, Mr. Steffy observed the vehicle being returned to the M. W. Staging Base, Perryville, Maryland which was being driven by Mr. James Williams.

After two postponements, the hearing took place on September 28, 1990. On October 12, 1990, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal in all capacities.

Thereafter, the Organization filed a claim on behalf of the Claimant, challenging his dismissal. 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 we find them to be without merit. We have reviewed the transcript of the hearing and we find that the Claimant received a fair and impartial investigation.

With respect to the merits of the charge, 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 misappropriating Company property when he used a Company vehicle without permission on August 1, 1990. The record reveals that the Claimant did not receive permission from any supervisor to take the vehicle with him on the date in question. Even in the Claimant's testimony, he does

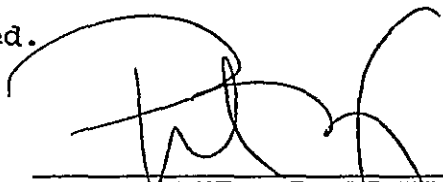
not state that he was granted permission to remove the vehicle.

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, although the Claimant had lengthy seniority with the Carrier, the record reveals that he had been suspended on numerous occasions, some of those occasions involving the unauthorized use of a Company vehicle. The record reveals 69 days of suspension, 60 of which occurred between 1988 and 1990. Given that background and the seriousness of the offense in this case, this Board cannot find that the action taken by the Carrier in terminating the employment of the Claimant was without just cause. Therefore, the claim will be denied.

AWARD

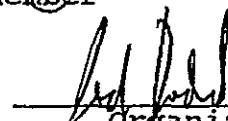
Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



Organization Member

Dated: 4-29-92