

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 142

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

The 15-day suspension of Claimant Roscoe Small was
unwarranted.

FINDINGS:

Claimant Roscoe Small was employed by the Carrier as a
trackman at its Southern District/New York Division.

On May 30, 1990, the Carrier notified the Claimant to appear
for a formal investigation in connection with the following
charges:

In that on May 23, 1990, in Pennsylvania Station,
Engineering Department, Assistant Division
Engineer's Office at approximately 8:00 a.m., you
were in violation of:

Amtrak General Rule L . . .

When you refused a direct order from Assistant
Division Engineer, A. F. Mc Nally to submit to a
physical examination. After allegedly being
injured on the job.

Rule F, Sec. 3 . . .

When you claimed on May 23, 1990, to have been
injured by the effects of fumes from the platform
resurfacing project.

After two postponements, the hearing took place on August
16, 1990. On August 24, 1990, the Carrier notified the Claimant
that he had been found guilty of violating Rule L, but that there

was insufficient substantive evidence to prove his violating Rule F, Section 3. The Carrier thereafter assessed the discipline of a fifteen-day suspension, time held out of service to apply.

Said decision of the Carrier being unsatisfactory to the Organization and 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 that the Claimant refused a reasonable order from his Supervisor to take a physical exam after he had complained of chest pains and shortness of breath. The record reveals facts upon which the Carrier was legitimately concerned about the Claimant's health and its demand that he see a doctor was not an unreasonable request.

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.

Rule L requires that employees obey instructions, directions, and orders from supervisory personnel. It is clear that when the Claimant in this case was given an order, he did not obey it. However, this Board recognizes the excellent work record of this Claimant over the past eleven years of service. He has no prior disciplinary background. We also note had made

several requests to talk to his Union representative before he would go to see a doctor. Given those facts and the previous record of the Claimant, this Board must find that the 15-day suspension issued to the Claimant was unreasonable. We hereby reduce the 15-day suspension to a 5-day suspension and order that the Claimant be made whole for the additional ten days of discipline.

AWARD

Claim sustained in part. The 15-day suspension of the Claimant is hereby reduced to a 5-day suspension and the Claimant shall be made whole for the ten days of backpay.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Dated: 3-31-92