

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 149

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (AMTRAK) -
Northeast Corridor

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

1. The dismissal of Trackman B. Smith for alleged violation of Safety Rule 4000, Conduct Rules C, D, and F-3 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System Docket NEC-BMWE-SD-2930D).
2. The Claimant shall be reinstated to the Carrier's service with all benefits and seniority rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant Bryant Smith, who was employed by the Carrier as a Trackman, allegedly sustained an on-the-job injury when he and Trackman A. Langston were assigned to remove a spike from a crosstie on the night of January 29, 1991. When a crowbar he was using to lift the spike slipped from the head of a sledgehammer, the Claimant's shoulders and arms were jerked, subsequently causing the Claimant pain to his arm and shoulder. Claimant asked to be taken to the hospital to get checked out. After going through the proper channels, the Claimant was taken to the emergency room. The emergency room physician diagnosed the Claimant as suffering from arthritis. He was later diagnosed by the Carrier's physician as cervical strain to the neck and upper back.

After a hearing, the Carrier dismissed the Claimant from service for allegedly violating Safety Rule 4000 and Conduct Rules C, D and F-3. The Carrier contends that the Claimant was properly dismissed from service on the grounds that he failed to promptly report an injury and also for falsely reporting a previously existing condition as an on-the-job injury.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offenses with which he was charged.

Once this Board has determined that there was 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 actions to have been unreasonable, arbitrary or capricious.

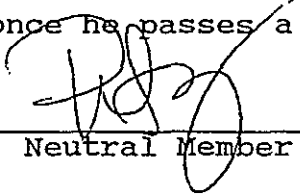
The Claimant in this case has been employed by the Carrier for eleven years. Although his record is far from excellent, this Board finds that the Carrier's action in terminating his employment was unreasonable. Therefore, this Board orders the Carrier to reinstate the Claimant on a leniency basis. However, before he is returned to work, the Claimant must pass a physical examination.

The Claimant is advised by this Board that the claims of

which he was found guilty are extremely serious and often do lead to discharge. The Claimant is being reinstated on a leniency basis, with no backpay, once he is physically fit. However, any further wrongdoing of this kind in the future, will almost assuredly lead to his permanent dismissal.

AWARD

Claim sustained in part. The Claimant's dismissal is hereby reduced to a lengthy suspension. Claimant is to be returned back to work, without backpay, once he passes a physical examination.



Neutral Member



Carrier Member



Organization Member

Date: 2/19/93