

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 151

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 Mr. Nelson Miller for alleged violation of Rules F and K of the Amtrak Rules of Conduct on July 31, 1991 was unwarranted, on the basis of unproven charges and in violation of the Agreement. (System File NEC-BMWE-SD-2932D).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wages loss suffered.

FINDINGS:

Claimant Nelson Miller, a Trackman assigned to the Tie/Rail Unit headquartered in mobile camp cars at Penn Coach Yard in Philadelphia, Pennsylvania, was dismissed from service after he was found guilty of allegedly using abusive, threatening language, disorderly conduct; inflicting bodily injury upon a fellow employee, and for being an accomplice to malicious destruction of Carrier property.

On July 31, 1991, at approximately 10:30 p.m., the Claimant and two co-workers walked through the camp cars to the kitchen car for an evening snack. While passing through Camp Car #AMTK15423, they awakened Trackman R. Snavelly and Engineer Work Equipment C. Graves. After a short discussion, R. Snavelly demanded that they leave because he wanted to sleep; so the

Claimant and his co-workers left.

Shortly thereafter, the Claimant was charged with allegedly violating Carrier Rules of Conduct F and K when, on the night in question, he and his companions entered Mr. Snavely's and Mr. Graves's camp car and made threatening remarks about another co-worker and struck Mr. Snavely and took other wrongful action causing damage to Carrier property.

The Organization raised an objection in the case contending that the witnesses were biased because the Carrier had read the charges into the record before removing the witnesses from the hearing room.

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 by using abusive, threatening language and behaving in a disorderly way including inflicting bodily injury on a fellow employee.

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 unless we find its action to have been unreasonable, arbitrary or capricious.

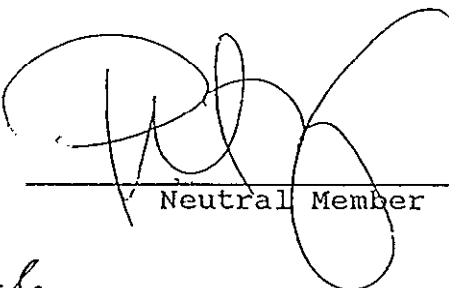
The wrongdoing in this case is so severe that it clearly justifies dismissal. The Claimant had been working for the Carrier for a relatively short period of time and there is

nothing in the record that convinces this Board that it should do anything but uphold the Carrier's action in this case.

Therefore, the claim must be denied.

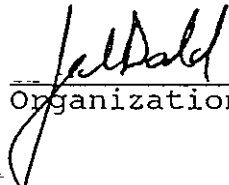
AWARD

Claim denied.



Neutral Member

Patricia A. Engle
Carrier Member



Organization Member

Date: 5-25-93