

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 158

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:

The Claimant, J. Williams, should be
exonerated, compensated for all time and
overtime lost, and all reference to these
charges should be removed from his record.
(NEC-BMWE-SD-3035D)

FINDINGS:

On November 24, 1991, the Claimant, J. Williams, and his
supervisor, R. Maine, became involved in an argument. The
Claimant felt that Mr. Maine was acting in an intimidating and
condescending way by approaching him in a loud and obnoxious
manner. The Claimant told Mr. Maine that he was drunk because
the Claimant could smell alcohol on Mr. Maine's breath and felt
that Mr. Maine should take a breathalyzer test. The Claimant was
removed from service for two weeks.

On March 6, 1992, a formal hearing was conducted to
establish whether the Claimant was guilty of allegedly violating
Rule D - Employee Conduct. It was determined that the Claimant
was guilty as charged and he was assessed the discipline of a 3-
day suspension. The Claimant was paid for the other days that he
was out of service. This reduced discipline was later further
reduced to a letter of reprimand that would be expunged from the
Claimant's record after one year if no similar incidents

occurred.

The Organization filed the instant claim on behalf of the Claimant contending that the Claimant was provoked to respond in the manner he did. The Organization also contends that Mr. Maine provoked the Claimant because the Claimant is Black and Mr. Maine is white.

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

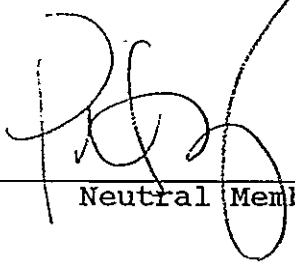
This Board has reviewed the evidence and testimony in this case and we find that the Carrier has simply not met its burden of proof that the Claimant was in violation of any rules justifying any discipline whatsoever. Therefore, the claim must be sustained.

A thorough review of the record makes it clear that any wrongful demeanor on the part of the Claimant was completely provoked by the actions of his supervisor. The Carrier's case, at best, is simply one of a Claimant who became loud and boisterous during a verbal confrontation with his supervisor. However, a thorough review of the record makes it clear that the Claimant was approached in a very unprofessional manner by supervision. Although the Claimant's actions may not have been totally justified, there is simply no basis in this record to assess any discipline whatsoever to the Claimant. Therefore, the claim must be sustained.

AWARD

Claim sustained. The reprimand that was issued to the

Claimant shall be removed from his previously unblemished 15-year service record.



Neutral Member



Carrier Member



Organization Member

Date: 9-27-93