

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 159

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

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

1. The disqualification of Electric Traction Foreman, R. Peterson, for alleged violation of Rule B was on the basis of unproven charges (NEC-BMWE-SD-3073D).
2. The Claimant shall be fully exonerated of the charges leveled against him with all seniority rights restored in the gang foreman and foreman classifications to the dates established prior to this incident, and he be compensated for all lost wages and overtime.

FINDINGS:

On October 15, 1991, the Claimant, R. Peterson, employed as a third rail foreman on that date, directed third rail electrician V. Robles to drive a bolt out of an energized third rail splice plate into a third rail bracket. Mr. Robles sustained injuries due to this action and the Claimant was charged with violating Rule B when he allegedly directed an employee under his jurisdiction to perform an unsafe act.

After a formal investigation held on February 4, 1992, it was determined that the Claimant was guilty as charged and he was assessed the discipline of permanent disqualification from work in the foreman and gang foreman classes.

The Organization appealed the discipline contending that the Carrier failed to meet its burden of proof; it has not

established that any unsafe act or condition existed. The Organization further argues that the Carrier failed to prove that the Claimant failed to properly perform the duties of his position. Furthermore, the Organization contends that the Carrier has not established the existence of any safety rules, policies or standards governing the type of work performed in this case and failed to charge Claimant Peterson with a specific safety rule violation relative to the Rules of Conduct that were allegedly violated.

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 not presented sufficient evidence to support the finding that the Claimant was guilty of violating Rule B of Amtrak's Rules of Conduct. There is nothing in this record that proves that the Claimant violated that rule which states that safety is of first importance in the operation of the railroad and an important aspect of an employee's duties.

There is no question that there was an accident that occurred on October 15, 1991, which resulted in injuries to employees under the supervision of the Claimant who was acting as Third Rail Foreman. However, as this Board has stated on numerous occasions in the past, the fact that injuries occurred does not necessarily mean that a rule was violated.

The testimony in the record indicates that there was no specific rule or handbook that guides a foreman in the type of

practice that was being performed on the date in question. There is no manual that states specifically what should be done by a foreman in a situation such as was faced by the Claimant and the employees under his supervision that day.

The witnesses seemed to agree that the only thing involved was a judgment call on the part of the Claimant. The Carrier contends that the Claimant made the wrong judgment call which lead to the production of the arc of electricity which caused the injuries. However, there is simply not sufficient evidence in the record to show that the judgment call made by the Claimant was so wrong that it justified any discipline whatsoever.

It is fundamental that without an appropriate finding of guilt, the Carrier cannot impose any discipline on a Claimant. In this case, this long-term employee of the Carrier was assessed the severe discipline of being disqualified from his foreman duties. The record simply does not justify that type of action. This Board finds that the claim is sustained and the Claimant should be immediately reinstated to his foreman duties which were wrongfully taken away from him in February of 1992. Moreover, Claimant should be made whole for any losses that resulted from the Carrier's actions.

#### AWARD

Claim sustained. Claimant's foreman rights are to be restored and he is to be made whole.

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Neutral Member

*Patricia A. Engle*  
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Carrier Member

*John D. Doherty*  
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Organization Member

Date: 9-27-93