

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK - Northeast Corridor)

Case No. 164

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The 90-day suspension of Truck Driver Robert Jones for alleged violation of Rules K and D was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-3184D).
2. The Claimant shall be exonerated, compensated for all time held out of service, including overtime, and the discipline assessed against him reversed.

FINDINGS:

On August 24, 1992, the Claimant, Robert Jones, a truck driver for the Carrier, allegedly dropped off Carrier vehicle #AA22126 at Freedman's Truck Center for repairs without informing anyone. Claimant did not show up for work on August 25, 1992, and Carrier had no knowledge where its vehicle was.

On August 26, 1992, Claimant was questioned as to the whereabouts of the vehicle and he informed the Carrier that he had dropped it off at Freedman's. However, when the assistant supervisor visited Freedman's, he was informed that the no one had any knowledge of the Carrier's vehicle ever being dropped off on the date in question. When the assistant supervisor returned to camp, the vehicle was parked in the Carrier parking lot.

On September 1, 1992, when the Claimant was asked by the supervisor and the assistant supervisor for an explanation as to where the vehicle had been between August 24 and August 26, 1992, he allegedly refused to answer.

On September 8, 1992, the Claimant was notified to appear for a formal investigation to determine whether he had violated Carrier Rules of Conduct K and D. Carrier Rule K prohibits theft, misappropriation or use for personal gain of Amtrak funds, property or services. Carrier Rule D requires employees to understand and obey Company and Department policies.

The Claimant was subsequently found guilty as charged and assessed the discipline of:

- a) Suspension of ninety (90) days. Forty-five (45) days to be served with the remaining forty-five (45) days to be held in abeyance for two (2) years; and
- b) Suspension of forty-five (45) days in accordance with Letter of Waiver of November 30, 1991 to begin at the conclusion of time served in Paragraph (a).

On behalf of the Claimant, the Organization appealed the discipline imposed contending that it was excessive and unwarranted since the Carrier failed to prove its case.

The parties not being able 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 of violating Carrier Rules K and D. The record indicates that the Claimant had

possession of the sole known set of keys. Moreover, the truck was missing from Amtrak property on August 25, 1992, which is the same date that the Claimant was not at work. Finally, his explanation that the truck had been dropped off for service was simply not true.

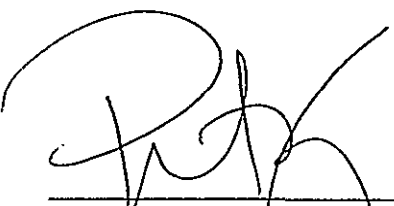
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the rule violations in this case, this Board cannot find that the discipline issued to the Claimant was unreasonable, arbitrary, or capricious.

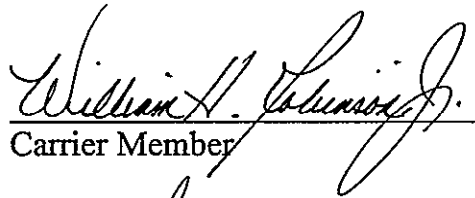
Therefore, the claim will be denied.

AWARD

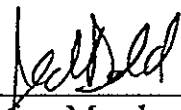
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member
DATED: July 7, 1994



Organization Member
DATED: 7-8-94