

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 168

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 B. Semliatschenko for allegedly violating Amtrak Rule of Conduct K was arbitrary, capricious, abuse of the Carrier's discretion, and in violation of the Agreement (System File NEC-BMWE-SD-3207D).
2. The Claimant shall be reinstated to his former position, his record shall be cleared of the charge leveled against him, and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant B. Semliatschenko was employed by the Carrier as a truck driver at its Hunter Yard in Newark, New Jersey.

On March 2, 1993, the Carrier notified the Claimant that he was being held out of service effective that date and that he was to appear for a formal hearing in connection with the following charge:

Charge: Violation of Amtrak Rule of Conduct
K . . .

Specifications: In that on Wednesday, January 13, 1993, at approximately 10:15 p.m., you were dispensing gasoline into a personal vehicle from the Amtrak fueling station in Hunter Yard, Newark, N.J.

After one postponement, the hearing commenced on March 17,

1993, and reconvened on April 28, 1993. On May 10, 1993, the Carrier notified the Claimant that he had been found guilty of violating Rule of Conduct K and was being assessed discipline of dismissal in all capacities.

The Organization thereafter filed a claim, challenging the Claimant's discipline. The Carrier denied the claim.

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

This Board has reviewed the procedural argument raised by the Organization; and although we find some of the elements of that argument convincing, the fact remains that the Claimant has admitted the wrongdoing. Therefore, the procedural defect becomes harmless error. As the Fourth Division stated in Award No. 3725:

When an employee freely admits a rule violation at the hearing, he may not thereafter raise the types of procedural defects complained of here.

This Board is not convinced that the assistant division engineer was apprised of the incident prior to February 10, 1993. However, because of the state of the records, this Board understands the suspicions of the Organization.

With respect to the merits of this dispute, this Board has reviewed the record and we find that it contains sufficient evidence to support the finding that the Claimant was guilty of the rule violations with which he was charged. The Claimant

admitted at the hearing, and at the oral argument before the Board, that he had engaged in theft and misappropriation for his own personal gain of Amtrak property.

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.

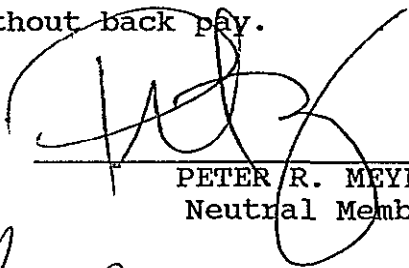
In the case at hand, the Claimant has been employed by the Carrier for seventeen years. His record, with a few minor exceptions, is perfect. This Board recognizes that a Carrier does not want to have dishonest employees working for it. This Board, on numerous occasions, has upheld the discharge of employees for theft, even when that theft involved a minimal amount of property. However, in this case, under these facts and this record, this Board finds that the action taken by the Carrier was unreasonable, arbitrary, and capricious when it completely terminated the Claimant after seventeen years of service. This Board believes that a lengthy suspension would have been appropriate and would have made it clear to the Claimant that this type of behavior will not be allowed.

This Board finds that the Claimant shall be reinstated to service, but without back pay. The time that the Claimant was off from work shall be considered a lengthy suspension. The Claimant should also be given written notice that any further

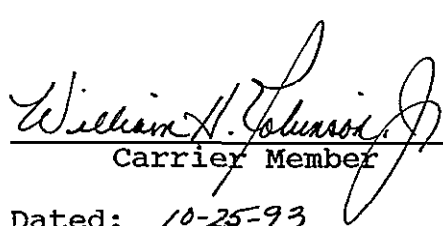
wrongdoing on his part will almost assuredly lead to his permanent discharge from the Carrier.

AWARD:

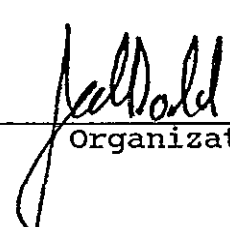
Claim sustained in part. Claimant is to be returned to service, but without back pay.



PETER R. MEYERS
Neutral Member



William H. Johnson Jr.
Carrier Member



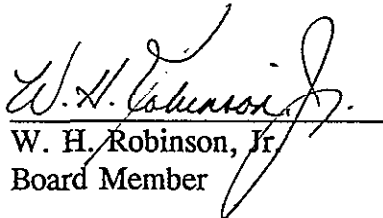
Jack Bold
Organization Member

Dated: 10-25-93

**CARRIER'S DISSENT TO THE AWARD OF
SPECIAL BOARD OF ADJUSTMENT NO. 986, CASE NO. 168**

The majority erred when it modified the discipline of dismissal assessed to the claimant for theft of carrier's property. The Board's findings are puzzling and perplexing. The Board stated that it has upheld discharge for theft of a minimal amount of property and that it will not set aside the imposition of discipline unless it found the carrier's actions to have been unreasonable, arbitrary or capricious. Yet for some reason, the Board determined that the action taken by Amtrak was unreasonable, arbitrary and capricious in a case where the Claimant freely admitted his guilt. The Board has provided no reasonable basis for its conclusion.

There is a long line of awards that have consistently held that discharge of a long-term employee for theft, while severe, is appropriate. In view of the serious nature of the proven offense and the clear evidence of guilt, the Board's decision is palpably erroneous.


W. H. Robinson, Jr.
Board Member