

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 173

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman D. West for alleged violation of Rules F(3) and O of Amtrak Rules of Conduct on October 12, 13 and 14, 1993 was arbitrary, capricious, on the basis of unproven charges (System File NEC-BMWE-SD-3308D).
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 wage loss suffered.

FINDINGS:

Claimant D. West was employed by the Carrier as a trackman on the track laying system within the Track Subdepartment.

To remain qualified on the operating rules and electrical instruction for the territory on which he worked, the Claimant was required to attend NORAC and AMT II classes once a year. The Claimant was scheduled to attend the NORAC operating rules classes in Philadelphia on October 11, 12 and 13, 1993, and an AMT-II electrical operating rules class on October 14, 1993. The Claimant had attended the October 11 class but allegedly had car trouble on the 12th and had arrived late. Since he had arrived late, he had missed pertinent instructions on the rules and therefore, the instructor informed the Claimant he would not be allowed to attend the remainder of the October

12th class, nor would he be allowed to attend the October 13th class. Additionally, Claimant did not attend the AMT-II class on October 14, 1993.

Even though the Claimant did not attend the aforementioned classes, he allegedly did not inform his supervisors that he did not complete the NORAC course nor the AMT II course. In addition, he had accepted compensation for each of those days he had missed. Consequently, the Claimant was instructed to appear for a formal investigation to determine his guilt of allegedly violating Rules F(3) and O. He was found guilty as charged and dismissed from service on January 27, 1994.

The Organization filed a claim on behalf of the Claimant arguing that the Carrier "failed to present credible evidence to support the charges leveled against [the Claimant]". The Organization contends that the Claimant allegedly did not know about the October 14th class. He was held back from attending the October 12th and 13th class. It further alleges that the Claimant had informed Foreman Swangler, who had completed the Claimant's time cards while he was away, that he did not complete the NORAC classes.

The parties not being able to resolve the issue, this matter comes 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 Rules F(3) and O when he failed to attend the AMT-II class on October 14, 1993, and then accepted ten hours' pay for having attended it on that date.

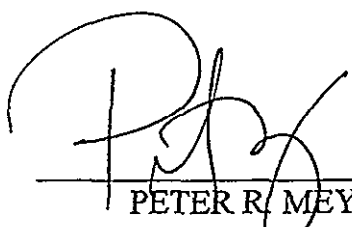
There is sufficient evidence to support the Carrier's position that the Claimant was specifically told to attend the class. Also, this Board does not believe the Claimant's contention that he was told by his supervisor that he would be paid for October 14, 1993, even though he did not attend the class.

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.

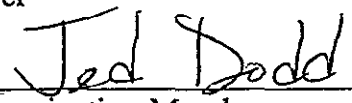
In this case, the Claimant was found guilty of a very serious offense of dishonesty. He accepted pay for attending a class that he never attempted to attend, nor did he inform his supervisor that he did not attend. This Claimant had less than two years' service at the time of his dismissal and this Board can hardly blame the Carrier for wanting to rid itself of an employee who has shown extreme dishonesty after such a short tenure of employment. Therefore, the claim must be denied.

#### AWARD

Claim denied.

  
PETER R. MEYERS  
Neutral Member

  
Carrier Member

  
Organization Member

DATED: 10/10/94

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