

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 174

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman D. West for alleged violation of Rules F(1), F(3), K, and O of Amtrak Rules of Conduct was arbitrary, capricious, on the basis of unproven charges (System File NEC-BMWE-SD-3309D).
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 on one of the Carrier's traveling production units. At the time of this incident, the Claimant was stationed in Groton, Connecticut.

On October 26, 1993, the Claimant allegedly failed to report for work. On October 27, 1993, the Claimant missed the bus that would have transported him to his job site and he alleged that it had left earlier than usual. He informed Foreman Mills that he would be absent on October 28, 1993, in order that he could go back home to Wilmington, Delaware. He missed his train on the 27th, so he stayed one more night at the motel where he was lodging. On October 28th, the Claimant received a phone call from Track Supervisor McLaughlin instructing him to leave the motel. The Claimant

allegedly turned his key in at the lobby desk and returned to his room to use the restroom and pick up his luggage. At the same time, he was confronted by Field Manager Graves and Track Supervisor McLaughlin, who informed the Claimant that he had been dismissed from service.

On December 15, 1993, the Claimant contacted the office of the Hearing Officer to inform him that he had not received any notice to appear for a hearing. On December 23, 1993, the Claimant received a notice to appear for a hearing on charges that he allegedly violated Rules F(1), F(3), K, and O and that he occupied a motel room from "October 26, 1993 through October 28, 1993 as an Amtrak employee, but you did not work in this period". He was also charged with assaulting and using profanity at the Track Supervisor and Field Manager. After the hearing, the Claimant was found guilty as charged and dismissed from service.

The Organization filed a claim on behalf of the Claimant arguing that the Carrier failed to prove its charges.

The parties not being able to resolve the issue, this matter comes before this Board.

This Board has reviewed the procedural argument raised by the Organization, and we find it to be without merit. The Organization is correct that Rule 71(a) requires that the trial be scheduled to be held within thirty days from the date that the carrier had knowledge of the employee's wrongdoing. In this case, the Claimant allegedly violated certain Carrier rules between October 26 and 28, 1993. Therefore, a hearing must be

scheduled within thirty days from that date. The evidentiary record reveals that a Notice of Investigation was issued on November 2, 1993, scheduling the hearing into the charges against the Claimant for November 17, 1993, and sent to the Claimant at his home address in Wilmington, Delaware, by certified mail. That two-page notice also set forth the various rule violations with which the Claimant was being charged and specified that he had occupied a motel room and billed it to the Carrier and, yet, did not work during that period. The record also contains a copy of the certified mail receipt, which indicates that the certified letter was "refused" on November 5, 1993.

A subsequent letter was sent to the Claimant on November 30, 1993, rescheduling the hearing "by mutual agreement" for December 16, 1993. That certified letter was returned unclaimed. Consequently, a third notice was sent to the Claimant on December 23, 1993, enclosing the first two notices and rescheduling the investigation for January 12, 1993. That December 23, 1993, letter indicates that the parties had spoken by telephone and the Claimant confirmed the address to which the earlier letters were sent. In that letter, the hearing officer states, "I reluctantly agreed to an additional postponement, despite the fact that you are out of service . . ."

With respect to the merits, 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 Amtrak Rules of Conduct F(1), O, and K. The record is clear that the Claimant absented himself from work on October 26, 27, and 28, 1993, and used Carrier-provided lodging at a motel on two of those nights, despite the


fact that he did not perform any service for the Carrier. When confronted with some of this wrongdoing, the Claimant used vulgar and unprofessional language to his supervisor in the presence of the motel manager and her child.


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 had been employed by the Carrier for less than two years at the time of this incident. Given the seriousness of the rule violations, which involve the Claimant's failure to report for work and some dishonesty, as well as abusive behavior, this Board cannot find that the Carrier's action in dismissing the Claimant when he previously received a ten-day suspension was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.


 PETER R. MEYERS
 Neutral Member


 Carrier Member

DATED: 10/10/94


 Ted Dodd
 Organization Member

DATED: 10-10-94