

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR

Case No. 182

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

1. The dismissal of Electric Traction Foreman A. DeMaio for alleged violation of Rule F, Paragraph 3, was arbitrary, capricious, unjust, on the basis of unproven charges, and in violation of the Agreement (System File No. NEC-BMWE-SD-3452D).
2. The Claimant shall be reinstated to the Carrier's service with seniority and all other rights unimpaired, have his record cleared of the charges leveled against him, and be compensated for all wage loss suffered from January 6, 1995, until his return to service.

FINDINGS:

Claimant A. DeMaio was employed by the Carrier as a foreman at its Durant Yard located in Newark, New Jersey, at the time of the incident.

By letter dated January 11, 1995, the Carrier notified the Claimant to appear for a formal investigation into the charges that on January 6, 1995, the Claimant violated Amtrak's Rules of Conduct, Rule "F," paragraph 3, in that he was a participant in the misappropriation of Carrier property.

After one postponement, the hearing commenced on March 6, 1995. On March 20, 1995, the Carrier notified the Claimant that he was found guilty of the charge leveled against him and was being dismissed from the service of the Carrier effective that date.

The Organization filed a claim, challenging the Claimant's discipline. The parties not being able to resolve the issues, this matter is now before this Board.


This Board has thoroughly reviewed the record in this case and we find that although the Carrier was obviously victimized by misappropriation of Carrier property by a number of the Carrier's employees, the Claimant in this case was not proven guilty of any wrongdoing. Therefore, the claim must be sustained.

It is fundamental that in order to sustain discipline or a discharge, the Carrier has the burden of proof. It must present sufficient evidence that the Claimant engaged in some wrongdoing to justify his discipline or termination. In this case, although there is evidence of some serious wrongdoing that occurred, there is simply not any evidence of the Claimant's involvement in the conspiracy to misappropriate the Carrier's property. The Claimant was the supervisor of some of the individuals who engaged in the wrongdoing; and, he was allegedly "fingering" by the supposed "ring leader". However, other than the statement by that one individual, whose credibility is greatly questionable given the facts of this entire situation, there is no other evidence that ties the Claimant to this wrongdoing. Consequently, the Carrier has not met its burden of proof.

The Claimant in this case has been employed by the Carrier for over 19 years. It is unfortunate that he had to go through all of this, but this Board will now attempt to right the wrongs by ordering his reinstatement with full backpay.

AWARD:

Claim sustained. The Claimant shall be reinstated with full backpay effective on or before September 7, 1995.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER**DATED:** 9-12-95

ORGANIZATION MEMBER**DATED:** 9-12-95