

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 184

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

1. The dismissal of Truck Driver F. Allen for allegedly being boisterous and using vulgar language and alleged failure to obey directives from Mr. C. Patterson on March 1, 1995, was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-3456D).
2. The Claimant shall be returned to the Carrier's service, his record shall be cleared of the charges leveled against him, and he shall be paid for all wage loss suffered.

FINDINGS:

Claimant F. Allen was employed by the Carrier as a truck driver in Philadelphia, Pennsylvania, at the time of the incident.

By letter dated March 7, 1995, the Carrier notified the Claimant to appear for a formal investigation into the charges that on March 1, 1995, the Claimant violated Amtrak's Standards of Excellence section entitled, "Professional and Personal Conduct," subsections "Teamwork" and "Conduct." Specifically, the Claimant was charged with failing to comply with the direct instructions of Track Supervisor C. Patterson and Track Foreman S. Wilson to attend to his assigned duties in that the Claimant exhibited unacceptable boisterous conduct involving the use of loud and vulgar language and made a direct intimidating threat of a potential assault toward Mr. Patterson.

The hearing commenced on March 17, 1995, and concluded on March 20, 1995. On April 3, 1995, the Carrier notified the Claimant that he was found not guilty of failing to comply

with instructions from Mr. Wilson and not guilty of making threats toward Mr. Patterson, but that he was guilty of being boisterous, using vulgar language, and failing to obey directives from Mr. Patterson. The Claimant was dismissed from the service of the Carrier effective April 3, 1995.

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 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 being boisterous, using vulgar language, and failing to obey directives from his supervisor. The record contains substantial evidence of a major dispute that took place between the Claimant and his supervisor on March 1, 1995. It is evident from the record that the Claimant did disobey some orders from his supervisor and acted boisterously and used foul language toward his supervisor in violation of the Carrier's rules.

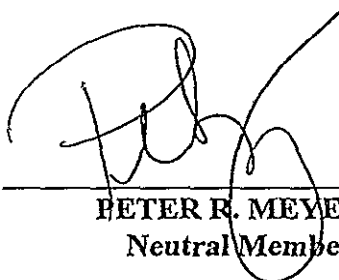
Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline, unless we find its action to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant was terminated for his wrongdoing. The record reveals that the Claimant had been employed by the Carrier for over 19 years prior to this incident. Although his disciplinary record is far from perfect, this Board must find that the Carrier's action in terminating his employment as a result of this incident was unreasonable and arbitrary given the Claimant's long service and must be overturned.

The Claimant shall receive no backpay and the time that he was off shall be considered a lengthy suspension for his proven wrongdoing in this case. In addition, the Claimant should be placed on notice that he must reform his behavior because the next time that an incident such as this occurs, he will most likely again face discharge.

AWARD:

Claim sustained in part. The Claimant shall be reinstated to service on or before September 7, 1995, but without backpay. The period that he was off from work shall be considered a lengthy suspension for his wrongful behavior.




PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9-12-95



ORGANIZATION MEMBER

DATED: 9-12-95