

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 185

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

1. The dismissal of Electric Traction Lineman/Trainee R. Denton for alleged violation of Rule F, Paragraph 3 was arbitrary, capricious, on the basis of unproven charges and excessive (System File NEC-BMWE-SD-3463D).
2. The Claimant shall be reinstated to the Carrier's 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 from January 6, 1995 until his return to service.

FINDINGS:

At the time of the incident at issue here, the Claimant was employed by the Carrier as an electric traction lineman/trainee at the Durant Yard in North Elizabeth, New Jersey and was assigned to continue bonding work on the Haynes Avenue Bridge. He was under the direction of the Gang Foreman Troncone.

On January 6, 1995, the Carrier was anonymously notified that its employees were observed at a scrap yard unloading copper from a Carrier vehicle. After investigating the allegations, the Carrier discovered that the Claimant and other gang members were involved in the sale of scrap copper which they had removed from the Haynes Avenue Bridge to Motor Plus Metals, Inc. Later that same day, the Claimant was removed from service and charged with "misappropriation of Company property".

During a formal hearing, the Claimant testified that he only did what he was "ordered to do" by Foreman Troncone and that he had no knowledge what he and his gang "were actually

doing". The Carrier, however, took into consideration the Claimant's own admission that he was involved in the selling of the material to the scrap yard and he actually received a share of the money that was exchanged for the scrap copper. Based upon this, the Carrier dismissed the Claimant from service.

The parties being unable to resolve the issue at hand, this matter now 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 misappropriating company property on January 6, 1995.

The transcript contains ample evidence of the Claimant's admissions to the wrongdoing. Not only was he involved in the sale, but he took his share of the money even though he stated, "I didn't want to take the money". The Claimant admitted that he "took it [the money] stupidly". The Claimant also admitted that he helped the gang unload the scrap metal onto the platform at the junkyard.


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 action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was found guilty of a very serious offense. Misappropriation of Carrier property often leads to discharge. The Claimant in this case had worked for the Carrier for a little more than one year. Given that short seniority and the seriousness of this wrongdoing, this Board cannot find that the Carrier acted unreasonably,

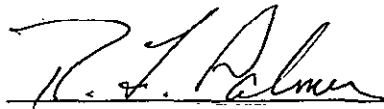
arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

AWARD:


Claim denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
DATED: 9-25-95



ORGANIZATION MEMBER
DATED: 9-25-95