

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 2

Docket No. NEC-BMWE-SD-1297D

PARTIES: Brotherhood of Maintenance of Way Employees  
TO :  
DISPUTE: Amtrak

FINDINGS:

On April 2, 1985, Claimant Louis H. Johnson was notified that he was being held out of service beginning that day in connection with the incidents that occurred between the hours of 4 a.m. and 7 a.m. on April 2, 1985. On April 4, 1985, Claimant was sent a Notice of Hearing, scheduling an investigation for April 10, 1985, into the charge that the Claimant threatened a foreman with a weapon. Claimant was charged with violations of Rules I and J. Those rules state:

Rule I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.

Rule J. Courteous conduct is required of all employees in their dealing with the public, their subordinates, and each other. Boisterous, profane, or vulgar language is forbidden. Violence, fighting, horseplay, threatening, or interfering with other employees or while on duty is prohibited.

After a few postponements, a hearing was held on April 29, 1985; and as a result of the hearing, the Claimant was dismissed from the service.

The Organization contends that the Carrier did not present sufficient evidence to sustain the hearing officer's finding of

guilty. The Organization contends that the Claimant presented substantial evidence of an alibi that he was in a restaurant at the time of the incident. The Organization also points to the statements of two individuals who contended that they observed the Claimant in the restaurant 17 miles away from the alleged incident at the same time the Claimant's wrongdoing allegedly occurred. The Organization argues that the Claimant adequately rebutted the Carrier's case, and the Carrier did not adequately respond to the rebuttal. Hence, the Organization argues, the claim should be sustained.

The Carrier argues that the testimony of the foreman clearly establishes that the Claimant threatened the foreman, first with a knife and later with a firearm. Moreover, the record is clear that the conversation during the threatening behavior related to the work place and the fact that the Claimant believed that the foreman had been responsible for the Claimant not being paid monies he believed he was owed. Finally, the Carrier argues that the wrongdoing of the Claimant plus his discipline history justified the discharge.


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 Carrier's finding that the Claimant was guilty of the offense with which he was charged. Claimant clearly violated the rules by threatening his foreman with a knife and a gun.

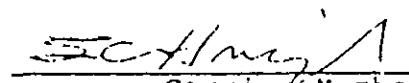
Once this Board decides that there is sufficient evidence in the record to support the Carrier's finding of guilty, we then turn our attention to the amount of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that it was unreasonable, arbitrary, or capricious. The Claimant's record

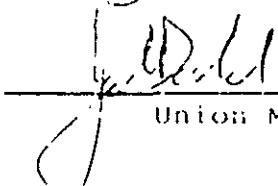
shows an extensive discipline history, including a previous suspension and several letters of warning. That record coupled with the seriousness of the charges proven against the Claimant are sufficient to support the Carrier's decision to terminate the Claimant.

AWARD:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Union Member

Date: 12-30-86