

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 202

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

1. The dismissal of Machine Operator D. C. Hill for alleged violation of Amtrak's 'Standards of Excellence' on June 1, 1998 was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-3857D).
2. The Claimant shall be returned to the Carrier's service, his record cleared of the charges leveled against him and he shall be paid for all wage loss suffered.

FINDINGS:

On June 9, 1998, the Claimant received notice from the Carrier to appear for an investigation in connection with the charge of violating the Carrier's Standards of Excellence when he allegedly used slang, vulgar and demeaning language toward Gang Supervisor R. G. Gallagher on June 1, 1998. The Claimant was found guilty of the charges leveled against him which resulted in his dismissal from the Carrier's service.

The Organization filed the instant claim on behalf of the Claimant contending that the Carrier failed to present any credible evidence to support the charges against the Claimant. The Organization argues that on June 1, 1998, it was Supervisor Gallagher who used the vulgar language toward the Claimant after the Claimant did not provide a

copy of a Med-1 Form that Mr. Gallagher had requested from the Claimant. Claimant was exercising his rights to displace a junior employee on Mr. Gallagher's tie/rail gang headquartered at the Days Inn Hotel in Lancaster, Pennsylvania. Upon arrival, Mr. Gallagher requested a copy of a Med-1 Form from the Claimant. However, the Claimant was not given such a form from his medical facility nor was he instructed by the Carrier that he would need to supply such a form. The Organization contends that when the Claimant attempted to give Mr. Gallagher the Claimant's receipt from Smith Klein & Beckman for his drug/alcohol test, Mr. Gallagher became argumentative and began to use vulgar and abusive language toward the Claimant.

The Carrier denied the claim contending that the Claimant used profane language and threatened bodily harm toward Supervisor Gallagher. The Carrier argues that Mr. Gallagher had informed the Claimant at 7:30 a.m. on the morning of June 1, 1998, that he would not be able to return to work without a Med-1 form or confirmation from the Carrier's nurse in Philadelphia that the Claimant was cleared for active duty. The Carrier contends that the Claimant allegedly approached Mr. Gallagher in the parking lot of the Days Inn on the evening of June 1st and became verbally abusive and threatened bodily harm. The Claimant's actions continued even when Mr. Gallagher proceeded to walk away. As a result, Mr. Gallagher filed a police report with the Carrier's Police Department. The Carrier contends that the Claimant was dismissed from service based on his actions on June 1, 1998, along with his poor personal record.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

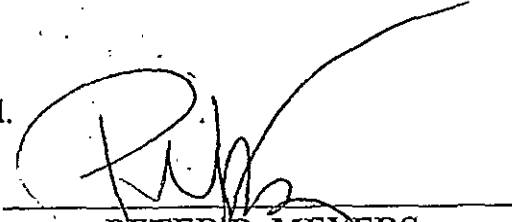
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of displaying profane and intimidating conduct towards his supervisor. The record reveals that the Claimant did not act appropriately and threatened the supervisor to the extent that the supervisor decided to file a police report.

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.

Given the very serious nature of the wrongdoing on the part of the Claimant in this case, plus the poor disciplinary record over his eight years of employment with the Carrier, which include several suspensions, two previous terminations, and numerous letters of warning, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant as a result of his latest incidence of wrongdoing in June of 1998. Therefore, the claim must be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
 Neutral Member


CARRIER MEMBER

DATED: 9/21/99


ORGANIZATION MEMBER

DATED: 9/21/99