

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 21

Docket No. NEC-BMWE-SD-1513D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On March 3, 1986, Claimant D.R. Whittaker offered his personal physician's return to duty note to Track Supervisor S. Haerter. A dispute developed when the supervisor rejected the note; the supervisor received a minor contusion over his right eye. Claimant subsequently was directed to appear at a hearing on the following charge:

Violation of Rule J of the National Railroad Passenger Corporation's Rules of Conduct, which reads in part:

"Courteous conduct is required of all employees in their dealings with . . . each other. Threatening or interfering with other employees . . . is prohibited."

Specification: On March 3, 1986 at 8:30 a.m., you exhibited threatening behavior in the Track Supervisor's Office, Wilmington, Delaware.

After a postponement, the hearing was held on April 16 and May 14, 1986. As a result of the hearing, Claimant was dismissed from service. The Organization subsequently filed a claim on Claimant's behalf, challenging his dismissal.

The Organization contends that under Rule 71 of the current agreement, Carrier is required to present written notice of the exact charge against an employee. The Organization argues that the instant charge does not satisfy Rule 71's specificity requirement. This procedural flaw requires exoneration of the Claimant.

The Organization also argues that Carrier has failed to prove

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its case against Claimant. There is no evidence that the track supervisor sustained any injury. The supervisor admittedly neither sought medical attention nor reported an injury. Moreover, Carrier has not established what threatening behavior was exhibited by Claimant. The Organization asserts that the only statement attributed to Claimant is a simple, businesslike request; there is no evidence that Claimant made any threats. The Organization then argues that the supervisor gave Claimant an unjustifiably hard time about Claimant's return to duty; the supervisor's conduct was an arbitrary and unjustified exercise of managerial authority. The Organization therefore contends that the claim should be sustained.

The Carrier contends that the charge was sufficiently specific under Rule 71. Moreover, the charge was based on Rule J, with which Claimant was familiar, rather than on Carrier's revised rules, promulgated during Claimant's medical leave.

The Carrier further asserts that the assessed discipline was not arbitrary, excessive, or capricious, but warranted and commensurate with the serious nature of the charge. Carrier contends that the record establishes that Claimant exhibited discourteous and threatening behavior to his supervisor; the supervisor's testimony is supported by the testimony of a clerk. Moreover, the supervisor exercised proper managerial discretion in refusing the note from Claimant's physician; even if the supervisor's action were an unjustified exercise of managerial authority, however, this would not justify Claimant's gross misconduct. The Carrier therefore contends that based on Claimant's past record and the evidence herein, the claim is without merit and should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that the procedural claims of the Organization are without merit. The charge was sufficient to advise the Claimant of the charges against him and allow him to adequately prepare for the hearing. The Claimant was also afforded all of his rights throughout the hearing.

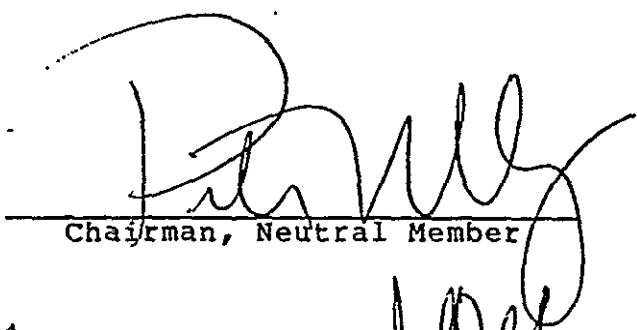
This Board also finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offenses with which he was charged. Although the Claimant was obviously frustrated by the refusal of his supervisors to accept the doctor's note which he had and allow him to return to work, Claimant was totally unjustified in engaging in the argumentative and threatening behavior in response to his superior's actions. It is possible that the alleged head butt was accidental; but if the Claimant was not engaged in the dispute, the accidental head butt would not have occurred.

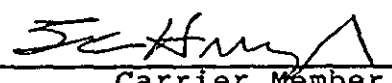
Once this Board finds that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. Normally, this Board will not set aside a Carrier's disciplinary action unless we find it to be unreasonable, arbitrary, or capricious. After carefully reviewing the transcript in this case and hearing the arguments of the parties, as well as reviewing the nine-year work record of the Claimant, which includes a great deal of discipline, this Board finds that the action taken by the Carrier in discharging the Claimant for his wrongful behavior on the date in question was not unreasonable nor excessive. The Claimant has received previous discipline as a result of his boisterous conduct and verbal abuse and, apparently, has not learned his

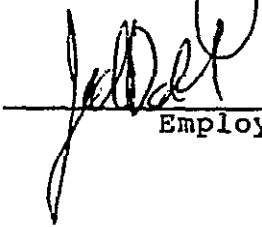
lesson. Consequently, the Carrier was fully within its rights when it terminated the Claimant; and this Board will not set it aside.

AWARD:

Claim denied.

  
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Chairman, Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Employee Member

Date: \_\_\_\_\_

7/24/87