

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 22

Docket No. NEC-BMWE-SD-1375D

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated August 6, 1985, Claimant G. Addison was notified to attend a hearing on the following charges:

Violation of NRPC Rules of Conduct, Rule I, that part which reads: Employees will not be retained in service who are insubordinate. Rule K, that part which reads: Employees must comply with instructions from their supervisor. Rule Y, that part which reads: Employees must obey instructions from their supervisors.

Specifications: In that on Sunday, July 28, 1985, at 7:15 AM you were instructed by Supervisor Roberson to board the gang bus and you were not to drive your personal vehicle to the job site. You were then seen by Supervisor Roberson at 7:45 AM driving your personal vehicle to the job site.

Failure to comply with written instructions previously issued to you which prohibits you from using non-company vehicle for transportation from Headquarters to Job Site. In that you used your personal vehicle to get to job site on July 28, 1985.

After a postponement, the hearing was held in absentia on August 29, 1985. As a result of the hearing, Claimant was assessed a thirty-day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that Carrier improperly conducted the hearing in absentia and that Carrier did not meet its burden of proof. The claim should be sustained.

Carrier argues that Claimant chose not to attend the hearing, so the hearing was properly conducted in his absence. Carrier further argues that the testimony adduced at the hearing establishes that Claimant is guilty as charged. The claim should be denied in its

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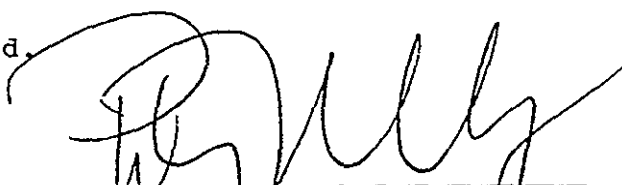
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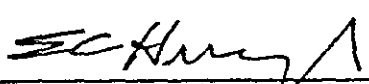
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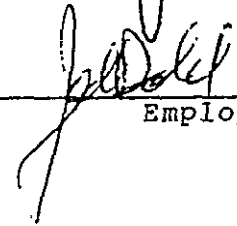
This Board has reviewed the evidence and testimony in this case, and we hereby find that the claim must be sustained on the procedural grounds raised by the Organization. The record is clear that the Claimant was not properly notified of the new hearing date. The record is clear that the Claimant received a certified letter indicating the new trial date on the date of the trial. It was thereby impossible for him to attend his hearing. The Organization properly objected to the fact that the hearing was being held in absentia and asked for a postponement and thereby preserved the issue for appeal. This Board finds that the Claimant was not afforded sufficient notice of the new hearing date, and therefore the Carrier was without the ability to issue discipline subsequent to that hearing. The Carrier could not provide a certified mail receipt showing that the Claimant was properly notified of the new hearing date.

AWARD:

Claim sustained.

  
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 Chairman, Neutral Member

  
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 Carrier Member

  
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 Employee Member

Date: 6-26-87