

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 223

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

1. The dismissal of Bridge and Building (B&B) employee H. Austin for alleged violation of Amtrak's "Standards of Excellence" was arbitrary, capricious and an abuse of the Carrier's discretion (System File NEC-BMWE-SD-4267D).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier in the B&B sub-department, headquartered at Penn Station, New York.

By letter dated July 26, 2002, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant allegedly violated the Carrier's Standards of Excellence governing Trust and Honesty. After a postponement, the investigation was conducted on April 25, 2003. By letter dated May 7, 2003, the Claimant was notified that he had been found guilty of the charges, and that he was dismissed from the Carrier's service in all capacities. The Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier initially contends that the Organization's procedural contentions are

without merit. Contrary to the Organization's assertions, the Carrier emphasizes that it sent the Claimant and the Organization a copy of the trial transcript and exhibits on May 9, 2001, via Federal Express. The Federal Express receipts demonstrate that the Claimant and the Organization both received these packages. Moreover, the Carrier also provided the Claimant and the Organization representative with a copy of the transcript and exhibits at the appeal hearing, when it was alleged that such copies had not been provided previously. The Carrier points out that it offered the Claimant and his representative the opportunity to reschedule the appeal hearing if they needed more time to review the transcript, but they declined to do so. The Carrier therefore argues that it properly provided the Organization and the Claimant with a copy of the trial transcript and the opportunity to properly prepare the appeal.

The Carrier then asserts that the overwhelming evidence in the record demonstrates that the Claimant did not perform service for the Carrier on July 9, 2002, and he did not receive medical tests at the Capital Health System facility as he asserted. The Carrier argues that the evidence clearly establishes that the Claimant submitted a fraudulent timecard for eight hours' pay on July 9, 2002, as well as a fraudulent medical excuse note. The letter from Capital Health Systems states that the Claimant did not have an appointment or appear at Capital Health Systems on July 9th.

The Carrier goes on to argue that the Claimant admitted his guilt on the charges during the investigation. In an attempt to justify his conduct, the Claimant discussed the

loss of his mother, his resultant grief, and his admitted dependency on drugs as reasons for his dishonest actions. The Carrier contends that although it is sympathetic, such circumstances are not valid reasons for the Claimant's conduct. The Carrier asserts that in light of the Claimant's admitted guilt, it can view these assertions only as a self-serving effort to mitigate the Claimant's guilt. The Carrier maintains that there can be no dispute that the Claimant violated the Standards of Excellence governing Trust and Honesty, that he was properly found guilty of those violations, and that the discipline assessed was appropriate.

The Carrier goes on to emphasize that the Board repeatedly has found that dishonesty in any form is grounds for dismissal in that it breaks the bond of trust necessary in an employer-employee relationship. The Claimant's conduct has irreparably harmed his relationship with the Carrier. The Carrier asserts that it must do all it can to protect itself from employee dishonesty, and it cannot be asked to condone the actions of a dishonest employee. In addition, although it is regrettable that an employee with the Claimant's years of service should commit such an offense, those years of service do not support a conclusion that the discipline was an abuse of discretion. The Carrier maintains that leniency is not a prerogative of the Board; only the Carrier may grant leniency.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the record demonstrates that at the time of

the incident at issue, the Claimant was depressed over the death of his mother and from dealing with his father's condition, and the Claimant also was suffering from chemical dependency and voluntarily had sought help for his condition. The Organization emphasizes that chemical dependency is a disease and is treatable. The Organization asserts that the Claimant's mental and emotional condition on July 9, 2002, prevented him from realizing, at that time, the seriousness of his actions.

The Organization then points out that the Claimant recognized his illness, sought help, received medical treatment, and remains in treatment. The Organization asserts that under these circumstances, the Carrier's decision to dismiss the Claimant cannot be upheld. The Organization maintains that the Board long has held that the purpose of discipline is to rehabilitate, correct, and guide employees. The dismissal of the Claimant, with twelve years of otherwise satisfactory service, serves no purpose other than punishment. The Organization argues that in light of the mitigating and extenuating circumstances involved here, there is ample Board precedent for the Claimant's reinstatement. The Organization asserts that there should be no doubt that the Claimant's dismissal cannot stand, particularly because the Claimant voluntarily sought and has remained in treatment.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this

Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

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 dishonesty in violating the Carrier's Standards of Excellence governing trust and honesty. The Claimant admitted his guilt and offered a number of unacceptable excuses at the hearing to justify his conduct. However, there is no question that the Claimant acted in violation of Carrier policy and rules.

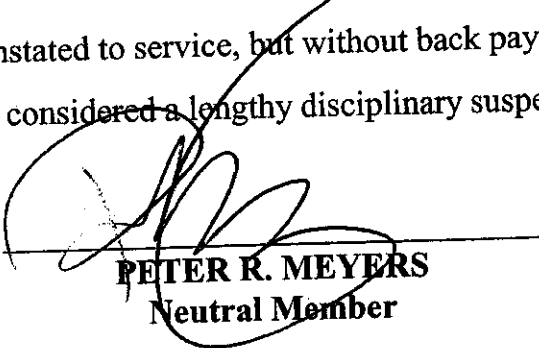
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case began his employment with the Carrier in 1979 and, with the exception of one ten-day suspension in 1993, he accumulated an excellent work record. Given that lengthy seniority, this Board finds that the Carrier's action in terminating the Claimant's employment for his actions herein was unreasonable and there was no just cause for it. We find that the Claimant should have more properly been issued a lengthy disciplinary suspension in response to this admitted wrongdoing on his part. This Board finds that the Claimant shall be reinstated to service but without back

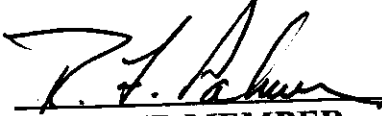
pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension for the admitted wrongdoing. It is the Board's hope that the Claimant has fully addressed his personal problems and has successfully completed the assistance programs so that he can continue to work as a good employee for the remainder of his career.

AWARD:

The claim is sustained in part and denied in part. There was no just cause for the discharge. There was just cause for the issuance of a lengthy disciplinary suspension. The Claimant shall be reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER


CARRIER MEMBER

DATED: October 12, 2004

DATED: 10/13/04