

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 227

STATEMENT OF CLAIM:

Appeal of the thirty days' suspension (twenty days' actual and ten days' deferred) assessed Claimant E.J. Smith, as a result of an investigation conducted on November 19, 2002.

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Mid-Atlantic Division Foreman, headquartered in Perryville, Maryland.

By letter dated October 10, 2002, the Claimant was notified to appear for a formal investigation and hearing on multiple charges relating to Claimant's alleged failure to attend to his duties by failing to maintain control over track car movements on September 22, 2002, which resulted in Burro Crane A58813 failing to stop at the northbound home signal at Prince Interlocking, causing damage to #32 Switch Machines, fouling adjacent Track #3, and endangering Claimant, fellow employees, and the traveling public. After a couple of postponements, the investigation was conducted on November 19, 2002. At the start of the investigation, the Carrier withdrew charges that Claimant had violated NORAC Operating Rules, Reporting for Duty, 4. Job Briefings, Rule 801, and Carrier's Maintenance of Way Safety Rules and Instructions Rule 4204. In his December 2, 2002,

Decision, the Hearing Officer dropped the charges alleging that Claimant had violated NORAC Operating Rules 124(b), 241, 802, 807, 812, 812, 815 and 996. By letter dated December 3, 2002, the Claimant was notified that as a result of the investigation, he had been found guilty of charges that he had violated Carrier's Standards of Excellence governing Safety and Attending to Duties, as well as NORAC Operating Rules S, B 133(d), 800, and 997, and that he was assessed a thirty-day disciplinary suspension (twenty days' actual suspension and ten days' deferred suspension). The Organization filed a claim on the Claimant's behalf, challenging the assessed discipline. The Carrier denied the claim.

The Carrier initially contends that contrary to the Organization's assertion that the discipline was harsh and excessive and that Claimant should not be held responsible for a mechanical failure of the Burro Crane's brakes, the record shows that there was no evidence of brake failure on the Burro Crane. Moreover, the Claimant acknowledged that he would have ridden on the lead piece of equipment if the Operator was not familiar with the territory. The Carrier maintains that because the Operator was not qualified on the physical characteristics of the territory involved, the Claimant was responsible for ensuring that the Operator was aware of the limits of the Form D and the location of the home signal at which he was required to stop.

The Carrier argues that the record demonstrates that Claimant is guilty as charged. Claimant's violation of critical safety and operating rules cannot be taken lightly, especially in light of that fact that these rules are most important to the safety of the Carrier's employees, customers, and the public; these rules are key to preventing serious

collisions and train accidents. The Carrier emphasizes its right and responsibility to establish and enforce rules for the safe conduct of its operations. Violation of these rules places Carrier at risk and jeopardizes its employees. The Carrier asserts that it must impose discipline on employees who violate these rules. The Carrier argues that it must make clear, through disciplinary action, that safety should be of the utmost concern. The Carrier asserts that the thirty-day suspension (twenty days' actual and 10 days' deferred suspension) at issue cannot be viewed as excessive, especially in light of the tragedy that could have resulted.

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

The Organization contends that the Carrier has failed to meet its burden of proof in this case. The Organization maintains that to satisfy its burden of proof, the Carrier is required to more than merely charge an employee with a general, non-specific rule, and then fail to demonstrate how that employee was specifically responsible for a violation of that rule. The Organization argues that there is no proof that Claimant violated any Carrier rules, and the derailment of the Crane was the result of faulty brakes, not any rule violation.

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 evidence and testimony in this case, and we find that

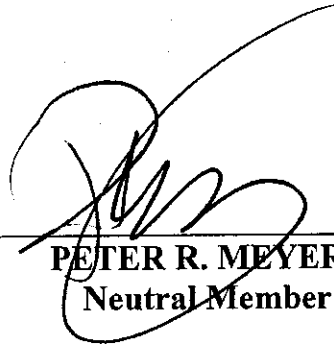
there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating several Carrier safety rules. The record is clear that the Claimant failed to maintain control over the track car movements which resulted in a crane failing to stop at a northbound signal, causing damage to switch machines. In addition, the Claimant's wrongdoing endangered the Claimant, other employees, as well as the traveling public. There is no evidence of brake failure or any other mechanical failure that led to the incident that led to the Claimant's discipline. We find that the Claimant was clearly guilty as charged of the several rule violations.

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 was assessed discipline of a thirty-day suspension plus a ten-day deferred suspension. Given the seriousness of the wrongdoing in this case, this Board cannot find that the disciplinary action taken by the Carrier against the Claimant for his rule violations in this case was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 3/14/05


CARRIER MEMBER

DATED: 3/3/05