

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 23

Docket No. NEC-BMWE-SD-1402D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On September 5, 1985, Acting Foreman S. Robinette questioned Claimant G. Addison about why Claimant was not wearing safety glasses, and a dispute arose between the two. Following a conference a few hours later that day, Claimant was removed from service. Claimant subsequently received notice to attend a hearing into the following charge:

Violation of Rule "J" which states in part; "Courteous Conduct is required of all employees in their dealings with each other. Threatening other employees while on duty is prohibited."

Violation of Rule "K" which states in part; "Employees must comply with instruction from their supervisor."

Violation of Rule "Y" which states in part; "Employees must obey instructions from their supervisor whose duties require them to conform with instructions issued by various departments and be governed thereby."

When Claimant appeared at the hearing, he received a list of the following specifications:

Specification 1: In that on September 5, 1985, at approximately 10:00 AM in the vicinity of North Philadelphia Station you failed to follow instructions issued to you by Foreman S. Robinette with regard to wearing safety glasses while on duty.

Specification 2: In that on September 5, 1985, at approximately 10:00 AM in the vicinity of North Philadelphia Station you threatened Foreman S. Robinette with bodily harm while on duty and on Company property.

Specification 3: In that on September 5, 1985, at approximately 10:00 AM in the vicinity of North Philadelphia Station you failed to follow instructions issued you by Supervisor L. Roberson to remain off the tracks and not engage in any work related activity.

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The hearing was held on September 26, 1985. As a result, Claimant was dismissed from service. The Organization subsequently filed a claim on Claimant's behalf, challenging his dismissal.

The Organization contends that Carrier committed three fatal procedural errors. The Organization argues that the Carrier failed to provide five days' written notice of the exact charges against the Claimant, and the Carrier improperly introduced Claimant's prior disciplinary record directly into evidence at the hearing. Finally, the Organization argues that the Carrier waived a prior probationary agreement, thereby estopping it from applying that agreement. The Organization further points out that Claimant did not give his unqualified assent to continuing the hearing; Claimant agreed to continue the hearing under protest and therefore did not waive his objection to Carrier's failure to give required notice of the charges.

The Organization then argues that Claimant is innocent of the charges. There is not sufficient evidence in the record to support the charge in Specification 1. The Organization points out that Supervisor Roberson did not characterize Foreman Robinette's request as a direct order; moreover, Claimant testified that he complied with the request. As to Specification 2, Claimant denied threatening Robinette, explaining that Robinette misunderstood him; Claimant should not be punished for miscommunication. Roberson's testimony establishes that Claimant complied with his instruction, proving Claimant's innocence of the charge in Specification 3. The Organization therefore contends that Carrier has failed to prove its case against Claimant and that the claim should be sustained.

Carrier contends that Claimant did not comply with Robinette's

repeated instructions, but instead threatened Robinette. Carrier asserts that Claimant admittedly responded in an insubordinate manner. Claimant was obligated to comply with Robinette's instructions and grieve later if he felt the instructions violated the agreement.

Carrier also contends that Claimant was not prejudiced by receiving the specifications on the day of the hearing. The specifications were outlined in the out-of-service notice given Claimant on the day of the incident; moreover, Claimant indicated he was ready to continue the hearing after receiving the specifications. Claimant never indicated surprise or inability to understand the specifications, nor did he indicate that he had been coerced into proceeding with the hearing.

The Carrier further points out that Claimant previously was reinstated to employment, on a leniency basis, after a dismissal for excessive absenteeism. Under the April 1985 reinstatement agreement, during a one-year probation period, Claimant was to be dismissed if found guilty of a rule violation. Carrier argues that it did not waive that agreement by assessing Claimant a suspension during the probation period. Carrier contends that based on Claimant's prior record, the seriousness of the charges, the record herein, the claim is without merit and should be denied in its entirety.

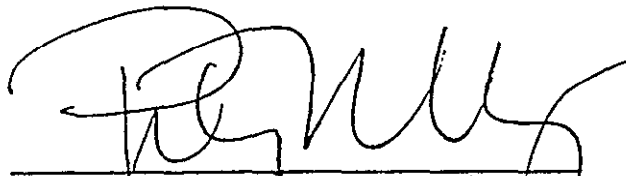
This Board has reviewed the evidence and testimony in this case, and we find that the procedural arguments raised by the Organization have no merit. This Board has considered all of the issues involved in the notice to the Claimant and the hearing itself, and we hereby find that the Claimant was afforded all of his due process rights throughout the disciplinary procedure.

With respect to the substantive issues, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the serious offenses with which he was charged. The Claimant clearly did not follow the instructions from his supervisors and was insubordinate and threatening in his conversations with his superiors. The actions taken by the Claimant, of which there was sufficient proof, were clear violations of Rules J, K, and Y.

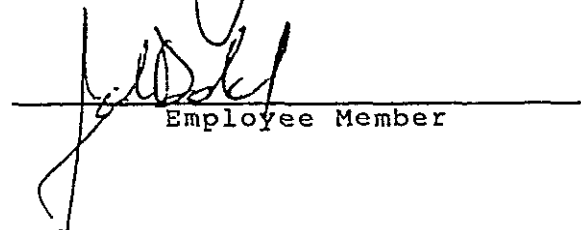
Once this Board finds that a claimant was properly found guilty, we next turn our attention to the type of discipline imposed. In this case, the Claimant was still on probation, having recently been reinstated on a leniency basis after a dismissal for other offenses. Given the nature of the offenses of which he was found guilty in this case, plus his prior service record during his five years of service, this Board cannot find that the action taken by the Carrier in discharging the Claimant was unreasonable, arbitrary, or capricious. Hence, the claim must be denied.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 6-26-87