

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 230

STATEMENT OF CLAIM:

Appeal of the dismissal of ET Foreman B. Rhodes for alleged insubordination and violation of Amtrak's Standard of Excellence, involving Professional and Personal Conduct, as well as NORAC Operating Rules D and T. (System File NEC-BMWE-SD-4331D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as an ET Foreman, headquartered at Secaucus, New Jersey.

By letter dated October 1, 2003, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant allegedly engaged in insubordination and conduct unbecoming an employee, in violation of Amtrak's Standards of Excellence, involving Professional and Personal Conduct, as well as NORAC Operating Rules D and T when Claimant allegedly displayed uncooperative, disrespectful, and confrontational behavior toward his supervisor and his foreman on September 24, 2003, and then disobeyed supervisory directives on both September 24 and 25, 2003. The investigation was commenced, as scheduled, on October 20, 2003, and then recessed and was completed on November 10, 2003. By letter dated November 25, 2003, the Claimant

was notified that he had been found guilty of the charges, and that he was dismissed from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier initially contends that the testimony adduced at the formal investigation proves that on September 23 and 24, 2003, the Claimant disobeyed a direct order from Assistant Supervisor Chris Owens to continue working and finish his assigned duties, that Claimant walked off the job without permission, and that Claimant disobeyed direct orders from Assistant Division Engineer Ken Hanson and Assistant Supervisor Chris Owens to remain at his headquarters location during the duration of his shift in order to contact a union representative and provide Carrier with a statement regarding his actions. The Claimant clearly was insubordinate when he disobeyed supervisory orders. Moreover, the Claimant's actions in failing to finish his assigned duties, walking off the job without permission, and failing to provide a statement, again disobeying supervisory directives, also constitute clear cases of insubordination. The Carrier asserts that such behavior cannot be condoned, particularly where, as here, Claimant was advised that such conduct would be considered insubordination. The Carrier argues that there can be no dispute that Claimant properly was found guilty as charged.

The Carrier maintains that it is well settled that an employee may not disobey a properly authorized and communicated instruction. The Carrier points out that numerous Board Awards have upheld Carrier's right to dismiss an employee for refusing to comply

with instructions. The Carrier argues that given the Claimant's relatively short service tenure, the seriousness of his wrongdoing, and his admissions, the discipline of dismissal cannot be viewed as arbitrary, capricious, or excessive. The Carrier points out that leniency is not a prerogative of this Board, and only the Carrier can grant leniency.

The Carrier asserts that Claimant's actions clearly were insubordinate and in violation of its Standards of Excellence. The Carrier emphasizes that insubordination in any form is grounds for dismissal. The Carrier cannot be expected to condone or tolerate insubordination, nor is it required to retain employees who have a misplaced belief that they have a right to determine what orders they will and will not obey. The Carrier argues that the seriousness of Claimant's proven and admitted violations, and his relatively short term of service, justify the discipline of dismissal.

The Carrier then contends that, contrary to the Organization's assertions, four and one-half spans of feeder wire had to be secured along Track 2's right of way in order for the railroad to be back in service by 5:00 a.m. The Claimant, as the operator, was crucial to the aerial work, while there was no work on the ground for anyone else to perform so those individuals were released for the day. The Carrier further points out that Claimant did not ask to leave until after he had been given orders to remain. Moreover, as Owens testified, everyone else had finished their tasks, but the Claimant had not. Owens indicated that it was an emergency situation when the work had not been completed and resulted in the delay of trains; in order for the track to go back in service, the work had to

be completed.

The Carrier further asserts that it is irrelevant whether the work was emergency in nature and who was released from service that day. Those arguments must be disregarded. The Carrier has the inherent right and authority to direct and control its workforce, and Claimant's supervisor determined that the work had to be completed to return the track to service and that Claimant was needed to perform the work in question. The Carrier maintains that employees are expected to comply with supervisory instructions, except when a proven safety hazard may be involved.

As for the Organization's argument that Claimant did not provide a statement because of his illness and immediate departure from work, the Carrier argues that such arguments are merely a self-serving attempt to mitigate the Claimant's guilt. The Carrier contends that the Claimant chose to ignore his superiors' directives, and he departed the property without notifying his superiors or receiving their permission. The fact that Claimant telephoned the Power Director to advise of his departure does not relieve Claimant of the responsibility to advise his supervisor of his departure, particularly when Claimant had been instructed to remain and provide a written statement.

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

The Organization initially contends that this case was not about insubordination, but rather was about Assistant Supervisor Owens' ego and authority over the Claimant.

The Organization points out that the Carrier's case is based on alleged disobedience of "direct orders" given by Owens. The Organization maintains that the first such order was that the Claimant had to remain on duty beyond his normal quitting time to finish a project as to which Owens totally miscalculated manpower and time. The foreman and gang foreman admitted that the job assignment was started well beyond the work window, and then Owens shorthanded the job by dismissing support personnel before the job was completed.

As for the allegation that the Claimant failed to provide a statement to Owens before completing his tour of duty, the Organization asserts that the Claimant became ill and went home before obtaining Owens' permission to leave the property. The Claimant was unable to complete the requested statement. The Organization points out that the Claimant made two attempts to contact Owens at his cell phone number, but Owens did not answer those calls. The Organization asserts that Carrier did not provide any evidence to dispute that the Claimant was ill at the time.

The Organization goes on to argue that the Carrier did not prove its allegations that Claimant left his gang members and gang foreman, foreman, and supervisor in the middle of some sort of emergency repairs. All of the witnesses testified that no emergency existed, and Owens did not declare an emergency. The Organization maintains that the job was to install feeder wire, not make emergency repairs to it; this was predetermined maintenance work associated with new construction. Moreover, the train delays were

strictly due to Owens' irresponsible planning and incompetence, not to the Claimant.

The Organization asserts that it is absurd to construe Claimant's leaving due to illness, and not providing Owens with a statement before leaving, as "insubordinate conduct." The Organization points out that under the parties' Agreement, Claimant had a right to be represented if required to make a statement to the Carrier. The fact that Claimant became ill and left the property before he provided his statement does not mean that Claimant forfeited his contractual rights to have his representative present.

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.

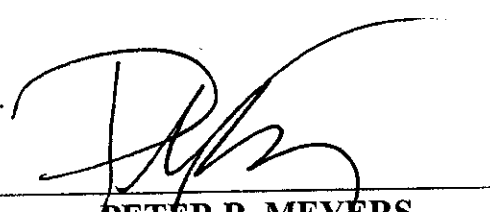
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to follow orders and leaving the work site without permission. The Claimant admitted that he was ordered to stay and he never did stay. The Claimant also admitted that he was ordered to report and he did not report. The Claimant may have disagreed with the orders, but as this Board has stated in the past on numerous occasions, the workplace is not a "debating society." The Claimant has an obligation to follow orders and grieve them later if he disagrees with them. This Board rejects the Claimant's position that the entire problem resulted from the incompetence of supervision.

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 a relatively short-term employee with only four years of seniority. Given the seriousness of the actions on his part, which really can be considered insubordination, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment in this case. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 3/14/05



CARRIER MEMBER

DATED: 3/3/05