

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 236

STATEMENT OF CLAIM:

Appeal of the discipline, a ten-day suspension, issued to Claimant F. Shu'Aib (System File NEC-BMWE-SD-4372D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Carpenter, headquartered at Penn Station in New York, New York.

By letter dated October 6, 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 Amtrak employee, in violation of Amtrak's Standards of Excellence relating to Professional and Personal Conduct and Amtrak's NORAC Operating Rule D. After a postponement, the investigation was conducted on October 31, 2003. By letter dated November 14, 2003, the Claimant was notified that as a result of the investigation, he had been found guilty of two of the three charges lodged against him, and he was assessed a ten-day suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier initially contends that the overwhelming evidence in the record

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demonstrates that the Claimant is guilty. The Carrier emphasizes that the Claimant admitted that he was not wearing his hard hat when Supervisor Riley approached him. The Claimant further admitted that when Riley asked the Claimant to put on his hard hat, the Claimant responded by asking why Riley wasn't wearing his glasses and pointing out that they were not working yet. The Claimant also acknowledged that when Riley returned, the Claimant was not wearing his hard hat. The Carrier maintains that the Claimant's testimony demonstrates that he was aware that he was required to wear personal protective equipment throughout the Station. The Claimant additionally admitted that Supervisor Riley had a right to give him orders and that he was obligated to follow those orders so long as he was not placed in harm's way.

The Carrier insists that there can be no dispute that the Claimant's conduct was insubordinate and unbecoming an Amtrak employee, and that the Claimant's behavior violated the cited Standards of Excellence and NORAC Operating Rule D. The Claimant engaged in uncooperative, disrespectful and/or confrontational conduct when Supervisor Riley asked him to attend a job briefing and put on his hard hat. The Carrier insists that the Claimant properly was found guilty, and the assessed discipline was commensurate with the Claimant's proven offenses.

The Carrier emphasizes that the Claimant was obligated to follow supervisory directives. If the Claimant felt that he was being mistreated, singled out, or that his Agreement rights were violated, the Claimant could grieve the matter through the established procedure. The Claimant acknowledged that he was obligated to obey Riley's orders, but the record shows that the Claimant instead chose to conduct himself in

a disrespectful, uncooperative and/or confrontational manner.

The Carrier insists that the Claimant's references to a previous incident involving Supervisor Riley have no bearing on this matter, even though the Claimant's comments demonstrate an underlying conflict between the Claimant and Riley. The Carrier maintains that the Claimant's apparent dislike for Riley does not give the Claimant the right to conduct himself in an insubordinate manner.

The Carrier points out that it is well established that insubordination in any form is grounds for dismissal. The Carrier asserts that in consideration of the Claimant's long service without prior discipline, it assessed a ten-day suspension in this case. The Carrier argues that the seriousness of the charges and the overwhelming evidence support the assessed discipline.

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

The Organization initially contends that the incident at issue between the Claimant and Supervisor Riley was aggravated by Riley's dislike of the Claimant. The Organization further asserts that Riley's testimony during the hearing was contradictory and therefore not credible. The Organization asserts that there was a previous incident between the Claimant and Supervisor Riley in which Riley called the Claimant's wife and told her that the Claimant refused to work overtime.

The Organization also maintains that employees are required to wear personal protection equipment only in work areas, rather than at all times when on Carrier property. The Organization insists that Supervisor Riley singled out the Claimant; other

employees were not wearing their hard hats, but Riley instructed only the Claimant about wearing his hard hat.

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 acted in a confrontational and uncooperative way when he was approached by his Supervisor and ordered to wear his hardhat. Therefore, the Claimant did act in violation of the Carrier's standards of excellence and subjected himself to discipline.

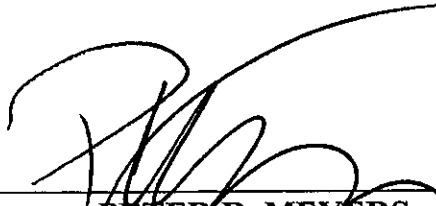
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Hearing Officer in this case came to the conclusion that the insubordination charge against the Claimant had not been proven. This Board agrees with that finding. There is no question that the Claimant did act in an improper manner, but there is also a great deal of evidence that the Claimant and the Supervisor had a previous bad relationship. The Carrier compares this case to an insubordination case where the discipline of discharge is often upheld. However, in this case, the insubordination case was not proven by the Carrier and we find that there was just cause for a five-day

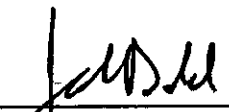
suspension, but not just cause for a ten-day suspension. Consequently, we order that the ten-day suspension be reduced to a five-day suspension and the Claimant be made whole for the additional five days.

AWARD:

The claim is sustained in part and denied in part. The ten-day suspension shall be reduced to a five-day suspension and the Claimant shall be made whole for the additional five days of pay.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 9-28-05



CARRIER MEMBER
DATED: 9/23/05