

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 24

Docket No. NEC-BMWE-SD-1318D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated May 13, 1985, Claimant M. Hemphill was notified to attend a hearing on the following charges:

Violation of Amtrak's Rules of Conduct, Rule "Y" which reads in part: "Employees must obey instruction from their Supervisor in matters pertaining to their respective branch" Rule "I" which reads in part: "Employees will not be retained in the service who are insubordinate"

Specification: In that on April 26, 1985, at approximately 10:05 AM, you were asked to read Amtrak's Safety Rule #4007 and you refused. You refused to read the Safety Rule, three (3) times after given a direct order.

After two postponements, the hearing was held on June 27, 1985. As a result of the hearing, Claimant was assessed a ten-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that two of Carrier's witnesses were not present when the incidents described in the specification occurred, so their testimony is hearsay and merely confuses the record. The Organization argues that Carrier's use of this testimony is a fatal flaw requiring that Claimant be exonerated.

The Organization next asserts that Rule 74 provides that discipline is held in abeyance pending conclusion of the appeal process. Claimant, however, was ordered to begin his suspension while his appeal was pending. The Organization argues that this also constitutes a fatal flaw that renders the discipline void ab initio.

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The Organization finally contends that Carrier did not meet its burden of proof. The testimony of the charging supervisor was refuted by Claimant, and Carrier failed to introduce any additional, credible evidence to support the charges. The Organization therefore contends that the claim should be sustained.

The Carrier argues that there is no evidence that either Claimant's due process rights or the agreement rules were violated; Claimant received a fair and impartial hearing. Carrier argues that the testimony of the two witnesses cited by the Organization is not hearsay. These witnesses testified about their own conversations with Claimant.

Carrier next asserts that Claimant did not begin serving the suspension until after the first appeal decision was rendered. Carrier argues, in addition, that even if Claimant had begun serving the suspension before the appeal decision was rendered, this would not have prejudiced Claimant's rights.

Carrier also contends that there is substantial evidence in the record to support its finding that Claimant is guilty as charged. Moreover, Claimant's denials do not refute the testimony of his supervisor. The discipline therefore is warranted, and the claim should be denied in its entirety.

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 the offense with which he was charged. The facts boil down to a credibility question, and this Board has stated on numerous occasions in the past that it will not determine issues of credibility since the hearing officer was in a

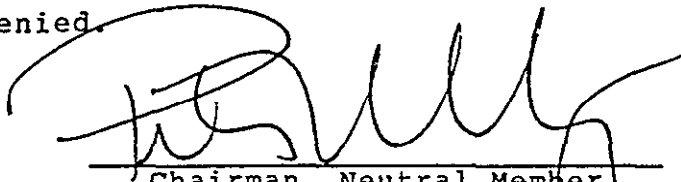
much better position to render a decision in that regard.

With respect to the procedural arguments of the Organization, this Board finds that the Claimant was not denied any of his due process rights and was not injured in any manner by the timing of the suspension.

Finally, a ten-day suspension is not an unreasonable disciplinary action for an offense of this kind.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date:

6-26-87