

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 243

STATEMENT OF CLAIM:

Appeal of the discipline, a thirty-day suspension, issued to Claimant R. Calhoun (System File NEC-BMWE-SD-4421D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Track Foreman, headquartered at Penn Coach Yard in Philadelphia, Pennsylvania.

By letter dated September 12, 2003, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant violated Amtrak's Standards of Excellence relating to Professional and Personal Conduct, to Safety, and to Attending to Duties, as well as Amtrak's NORAC Rules in connection with an incident in which the Claimant allegedly failed to maintain control over a track car's movement and allowed a movement by an unqualified operator operating alone. After a postponement, the hearing was conducted on October 14, October 28, and November 18, 2003, and on March 30 and May 20, 2004. By letter dated June 4, 2004, the Claimant was notified that as a result of the investigation, he had been found guilty of seven of the nine charges lodged against him, and he was assessed a thirty-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 record demonstrates that Foreman Hamby directed the Claimant to take the equipment to Chester Valley Yard with Operator Hutchinson, and that Hamby issued this directive because he was aware that Hutchinson was not qualified on the physical characteristics of the territory involved. Contrary to the Organization's assertions that Foreman Pettit should have waited for Operator Hutchinson in each block to catch up, the Carrier emphasizes that it was the Claimant's responsibility to ensure the safe movement of the equipment. Moreover, the Claimant acknowledged that although he usually rides in the lead piece of equipment, and would have waited for Hutchinson to catch up had he done so in this instance, the Claimant was not riding the lead piece of equipment during the incident in question. Instead, the Claimant chose to direct Hutchinson, who was not qualified on the physical characteristics of the territory, to make a move by himself, at 3:30 a.m., with no operating radio, to the end of the out-of-service limits and await the Claimant's arrival. The Carrier points out that the Claimant was responsible for ensuring that the Anchor Adjuster was safely moved to Downs and that the Operator was aware of the limits of the out-of-service track and the location at which he was required to stop.

The Carrier then asserts that the record shows that Supervisor Smothers did not direct the Claimant to ride with him until after the equipment had left. Smothers testified that the Claimant was in charge of the movement and should not have allowed the Operator to make the move without physical characteristics. The Carrier additionally

points out that the Claimant could have ridden the equipment in a safe manner if he had a firm handhold and foothold. The Carrier maintains that at the very least, the Claimant should have ridden on the lead piece of equipment, as he claimed he usually does, to ensure the safe movement of the Anchor Adjuster into Chester Valley Yard.

The Carrier argues that the overwhelming weight of the evidence demonstrates that the Claimant is guilty, and his violation of critical safety and operating rules should not be taken lightly. The Carrier maintains that these rules are critical to the safety of the Carrier's employees, customers, and the public, and they are key to preventing serious collisions and train accidents. The Carrier insists that violation of these rules places the Carrier at risk and jeopardizes the life and limb of its employees. The Carrier asserts that the discipline of a thirty-day suspension in this case cannot be viewed as excessive, particularly in light of the potential tragedy that could have resulted from Operator Hutchinson proceeding through the interlocking past a stop signal onto a live track.

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

The Organization initially contends that the hearing officer improperly based his decision in this case solely on the testimony of the Carrier's witnesses. The Organization points out that in his letter of decision, the hearing officer did not even acknowledge the presence of the Claimant or any of the Organization's witnesses. The Organization therefore argues that the Carrier violated Rule 68 of the parties' Agreement because it failed to provide the Claimant with a fair and impartial investigation; the hearing officer's bias in favor of the Carrier is shown by his failure to consider the Organization's

witnesses as being important to the hearing.

The Organization goes on to contend that because Foreman Steve Hamby had the track out of service in his name, Hamby was responsible for the movement of the car. Moreover, Supervisor Smothers directed the Claimant to ride with him. The Organization points out that the Claimant did what he was told, and the Claimant would have been charged with insubordination had he failed to do so. The Organization also emphasizes that it would have been unsafe for the Claimant to ride on the equipment unless there was a proper place to sit.

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 procedural arguments raised by the Organization, and we find them to be without merit. We find that the Claimant was guaranteed all of his due process rights throughout the hearing and that the Hearing Officer conducted the hearing appropriately.

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 allowing a movement of the track car by an unqualified Operator. The Claimant admitted that he did not act appropriately and in the usual fashion after he directed Operator Hutchinson to move equipment on territory on which he was not qualified. The Claimant was in charge of the movement and he violated the safety rules by having

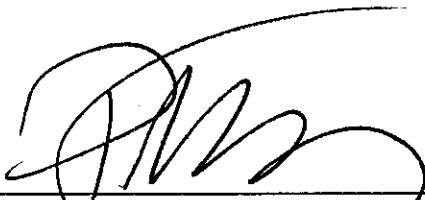
somebody who was not qualified perform the work.

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 issued a thirty-day suspension. Given the seriousness of the violation, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 9-28-05


CARRIER MEMBER

DATED: 9/23/05

I dissent. The majority ignores the fact that the NORAC rules specifically permit the claimant's actions, & he can not be found guilty of following these rules. Maybe the rules need to be modified but not at the expense of the claimant.