

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 244

STATEMENT OF CLAIM:

Appeal of the discipline, a thirty-day suspension, issued to Claimant S. Buchanan (System File NEC-BMWE-SD-4422D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as an Engineer Work Equipment "B" (Tilt Car Operator), headquartered at Morrisville, Pennsylvania.

By letter dated April 22, 2004, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant violated the Carrier's Roadway Worker Protection Manual Section 329, General Rule 4000 of the Maintenance of Way Safety Rules and Instructions, and the Carrier's Standards of Excellence relating to Attending to Duties, Professional and Personal Conduct, and Safety when the Claimant allegedly left her Watchman post without authorization, failed to clear the track before her departure, and failed to promptly report a self-inflicted injury that occurred while the Claimant was on duty. The investigation was started, as scheduled, on April 30, 2004, and then recessed and continued to completion on May 18, 2004. By letter dated June 2, 2004, the Claimant was notified that as a result of the investigation, she had been found

guilty of the charges, and she was being assessed a thirty-day suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline her. The Carrier denied the claim.

The Carrier initially contends that the Claimant admittedly had no way of warning the men because she needed more air for the air horn and the air horn froze up. The Carrier asserts that there can be no doubt that the Claimant became upset when she could not get the men's attention to clear the tracks, and she then dropped the vest and disc on the ground, threw the air horn into the ditch, and left her post before receiving instructions that on-track safety no longer was necessary or before being relieved by another Watchman. The Carrier maintains that the Claimant's conduct clearly violated Section 329 of the Carrier's Roadway Worker Protection Manual.

The Carrier acknowledges that it is commendable that the Claimant voluntarily assumed the position of Watchman, but this does not relieve the Claimant of her responsibility to properly perform the duties of a Watchman. The Carrier insists that there is no place for the behavior exhibited by the Claimant while assuming the duties of a Watchman, and being directly responsible for the safety of other employees. The Carrier points out that if the Claimant was upset that a truck was blocking her view, she nevertheless was responsible for remaining at her post and ensuring that the employees cleared the track, and stayed clear of the track, until the issue could be resolved. The Carrier argues that the record demonstrates that the men were confused as to what was going on, were not sure whether the horn blew, and did not know whether they were to clear and remain clear of the track. The Carrier asserts that this confusion alone shows

that the Claimant did not attend to her duties as required. The Carrier cannot have its employees working on or near live tracks while confused about whether they are to clear and remain clear of the track.

The Carrier asserts that the Claimant did not fulfill her responsibility to ensure that the employees all cleared the track, and remained in the clear, before leaving her post. Moreover, the Claimant jeopardized her own safety and caused an injury to herself by pounding the Watchman's disc on the ground and violently waving her arms. The Claimant also jeopardized the safety of others by becoming visibly upset while assuming Watchman duties, and by failing to properly ensure that all men cleared the tracks and remained clear of the tracks before she left her post. The Carrier points out that the fact that Maxfield had to pick up the vest and disc and locate the air horn clearly demonstrates that the Claimant did not have permission to leave her post, nor did she wait until she was relieved by another Watchman.

The Carrier goes on to assert that, contrary to the Organization's argument, there is no evidence demonstrating that the hearing officer was biased in his decision or failed to consider the testimony of the Organization's witnesses. The hearing officer was responsible for making credibility determinations, and the hearing officer chose to believe the Carrier's witnesses and the Claimant's own responses to questions asked at the investigation, which clearly demonstrate the Claimant's guilt. The Carrier insists that based on the Claimant's own testimony, there is no basis on which to conclude that the hearing officer was biased in his decision or that his credibility determinations should be overturned. The Carrier suggests that the Organization's allegations on this point are

merely a self-serving attempt to mitigate the Claimant's guilt.

The Carrier maintains that the Claimant's proven behavior clearly demonstrates that she failed to carry out the duties of a Watchman in a responsible, safe, and efficient manner. There can be no dispute that the Claimant's actions violated the cited rules, and that she properly was found guilty as charged. The Carrier asserts that the Claimant's violation of critical safety and roadway protection rules should not be taken lightly, particularly because these rules are critical to the safety of the Carrier's employees, customers, and the public; these rules are key to preventing serious injuries and accidents. The Carrier insists that it must be able to impose discipline upon an employee who actions violate these important rules, thereby making clear that safety should be of the utmost concern.

The Carrier argues that the thirty-day suspension at issue in this case cannot be viewed as excessive, especially in light of the potential tragedy that could have resulted from the Claimant's failure to properly carry out the duties of Watchman. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the thirty-day suspension at issue was harsh, unusual, and capricious. The Organization asserts that had the hearing officer truly digested the charges lodged against the Claimant, he could not have issued such a decision. The Organization insists that the hearing officer based his decision solely on the testimony of the Carrier's witnesses. The Organization points out that in the decision letter, the hearing officer does not even acknowledge that the Claimant and the Organization's witnesses were present. The Organization therefore argues that the

Carrier violated Rule 68 of the Agreement because it failed to afford the Claimant a fair and impartial trial. The Organization asserts that the hearing officer was biased in favor of the Carrier and did not consider the Organization's witnesses to be important with regard to this hearing.

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.

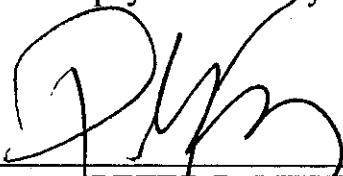
This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated the Carrier's rules on April 4, 2004. There is insufficient proof that the Claimant failed to clear the track before departure and insufficient proof that she failed to promptly report an injury that occurred while she was on duty. The record instead reveals that the Claimant performed her job properly in a very difficult situation. There is evidence in the record that the Claimant is very thoughtful of other employees and, during her twenty-seven years with the Carrier, she has always performed her responsibilities well. The record reveals that the Claimant did not leave her post until the position was covered on the date in question. Although the Carrier charges that she created a great deal of confusion, there is a great deal of testimony showing that there was no confusion among the men. There were a number of witnesses who supported the Claimant's testimony.

It is fundamental that, in discipline cases, the Carrier bears the burden of proof. In this case, the Carrier has failed to meet that burden and, therefore, the claim must be

sustained.

AWARD:

The claim is sustained. The Claimant's suspension shall be removed from her record and she shall receive back pay for the thirty days that she was off.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 8/26/05



CARRIER MEMBER

DATED: 8/27/05