

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 25

Docket No. NEC-BMWE-SD-1398D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On August 29, 1985, Claimant M. Hamphill became involved in a dispute with his gang foreman, R.J. Clark. Claimant subsequently was notified to attend a formal hearing on the charge:

Violation of NRPC Rules of Conduct, Rule "I" which states in part: Employees will not be retained in the service who are . . . quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will. Rule "J" which states in part: Courteous conduct is required of all employees in their dealings with the public, their subordinates and each other . . . . Violence, fighting, horseplay, threatening or interfering with other employees while on duty is prohibited.

Specification: In that at approximately 4:45 A.M. on August 29, 1985, on the wire train, in the vicinity of Odenton, you did shove your immediate supervisor, Gang Foreman, R.J. Clark. And, you did shove a desk drawer into his mid section (stomach).

The hearing was held on October 9, 1985. As a result of the hearing, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

The Organization contends that Carrier failed to give Claimant five days' notice of the hearing, a violation of Rule 71. Carrier notified Claimant of the October 9, 1985, hearing by letter dated October 3, 1985. Claimant did not receive this letter until October 8, 1985. The Organization contends that this fatal procedural error requires that Claimant be exonerated.

The Organization also argues that Claimant is not guilty of the charges. The Organization asserts that Clark's arbitrary manner

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contributed to the incident near the lockers. The Organization further contends that Clark positioned himself relative to the desk drawer so that it was impossible to open the drawer without its touching Clark's mid-section. Clark's positioning constitutes a provocative act designed to exacerbate the problem between Claimant and Clark.

The Organization finally asserts that there is no merit to Carrier's contention that Claimant failed to present a timely appeal. Claimant's appeal request was accepted and subsequently heard without Carrier raising the timeliness issue. The Organization argues that Carrier has waived any timeliness argument. The Organization therefore contends that the claim should be sustained.

The Carrier initially contends that Claimant's appeal of the discipline was not timely under Rule 74. This claim therefore is procedurally defective and should be dismissed. Carrier also asserts that the testimony adduced at the hearing establishes that Claimant is guilty as charged. Substantial probative evidence in the record supports Carrier's finding of guilt. Carrier contends that based on the serious nature of the charges, the assessed discipline was warranted and justified. Carrier finally points out that at the hearing, the Organization's representative did not object to the introduction of exhibits concerning the scheduling of the hearing. Carrier therefore asserts the Organization's procedural contention lacks merit and is not properly before this Board. The claim should be denied.

This Board has reviewed the evidence and testimony in this case, and we find that the procedural issues raised by both the Organization

and the Carrier are without merit.

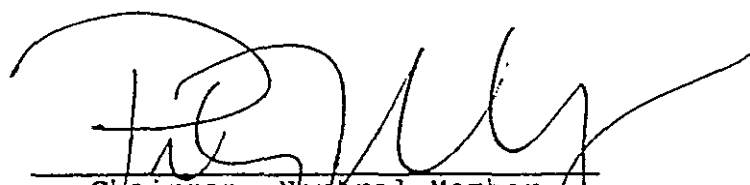
With respect to the substantive case, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged.

Although the Organization contends that the Claimant's supervisor initiated the altercation between himself and the Claimant, the record is clear that the Claimant engaged in activity which violates Rules I and J and is not conducive to a good work environment.

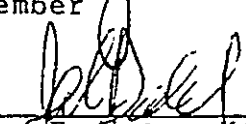
Once this Board determines that there is sufficient evidence in the record to support the finding of guilty, we next turn our attention to the type of discipline imposed. Normally, this Board will not set aside a Carrier's disciplinary action unless we find the Carrier to have been unreasonable, arbitrary, or capricious. In this case, the Claimant has been found guilty of a very serious offense. Also, less than two months before, the Claimant had received a ten-day suspension for violation of Rules of Conduct I and Y. Apparently, the Claimant did not respond very well to the suspension and did not learn to reform his behavior. Consequently, this Board cannot find that the action taken by the Carrier in discharging the Claimant for the rule violations with which he was charged in this case was unreasonable, arbitrary, or capricious. Hence, the claim must be denied.

AWARD:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Employee Member

Date: 6-26-87