

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 29

Docket No. NEC-BMWE-SD-1317D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated April 15, 1985, Claimant J.W. Turner was notified to attend a hearing on the following charges:

Violation of Amtrak Rules of Conduct, Rule "A" which reads: "Employees must render every assistance in carrying out the rules and special instructions and must promptly report to their supervisor any violation thereof."

Violation of Amtrak Rules of Conduct, Rule "Y" which reads: "Employees must obey instructions from their supervisor in matters pertaining to their respective branch of the service, and employees whose duties require them to conform with instructions issued by various departments must familiarize themselves therewith and be governed accordingly."

On May 9, 1985, Carrier added the following specification to the charges:

Specification: In that on April 8, 1985, you refused to comply with the Amtrak Rules and Instructions by reporting an alleged injury and subsequently refused to follow instructions from supervisory personnel to give statements or complete the necessary Amtrak form regarding this alleged injury.

After three postponement, the hearing was held in absentia on June 11, 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 initially contends that the charges are so vague that they do not specify what conduct is at issue. The Organization asserts that this vagueness is intended to allow Carrier to go on a "fishing expedition" in an attempt to find some type of incriminating behavior by Claimant. Moreover, the vague charges

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prevented Claimant and his representative from preparing a defense. Carrier's addition of the specification does not correct this fatal procedural error. Claimant received the specification 34 days after the alleged incident; the specification therefore was not timely under Rule 71. Because of these procedural errors, the Organization asserts that the discipline should be void ab initio, and the claim should be sustained.

The Carrier argues that there is no showing that any Carrier action violated Claimant's due process rights or violated any agreement rules. Carrier asserts that the charge notice and its addendum satisfy the "exact charge" requirement of Rule 71. Carrier points out that Claimant's representative at the hearing presented an able defense and indicated no surprise about or inability to understand the charges. Carrier further asserts that the record contains substantial evidence to support the finding of guilt; the assessed discipline was warranted. Carrier therefore contends that the claim should be denied in its entirety.

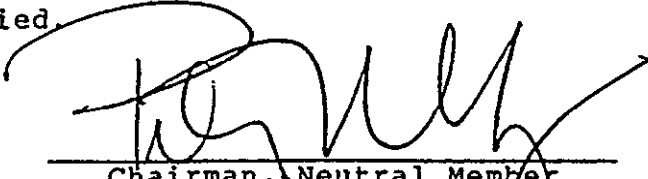
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged.


With respect to the Organization's procedural argument, although the original charge against the Claimant left something to be desired, it was soon amended to include the more specific facts of the alleged wrongdoing; and the Claimant was not prejudiced at all by the original charge. At the hearing, the Claimant's representative seemed to know precisely what the charges were; and the Claimant was thereby in no way injured by the original, somewhat vague charge.

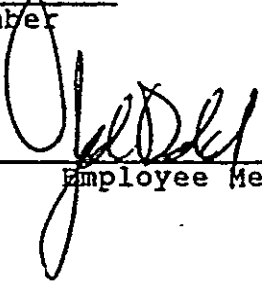
Finally, a ten-day suspension is commensurate with the offense.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date:

6-26-87