

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 33

Docket No. NEC-BMWE-SD-1447D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated December 13, 1985, Claimant was notified to attend a hearing in connection with the following charge:

Violation of Rule 'F', Amtrak Rules of Conduct, that part which reads: "All employees are required to conduct themselves in a courteous and professional manner in dealing with the public and other Amtrak employees. Boisterous conduct or horseplay and profane or vulgar language are prohibited." "Employees will not assault, threaten, harass, intimidate, fight or participate in any activity which could cause bodily injury to other employees or members of the public while on duty or on Amtrak property or using Amtrak equipment. Employees whether on or off duty, will not disrupt or interfere with other employees in the performance of their duties."

Specification: In that on December 13, 1985, at approximately 10:15 AM in B&B Foreman's room at 30th Street Station, you were involved in an argument and altercation with employee Frank Martines that resulted in a personal injury to yourself.

The hearing was held on January 10, 1986. As a result of the hearing, Claimant was assessed a thirty-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that the record establishes that Claimant was the victim of unprovoked aggression by B&B Foreman Martines; there was neither an argument nor an altercation because Martines simply attacked Claimant. The Organization asserts that the testimony of the employee who witnessed the incident proves that Claimant merely made a wisecrack to a third party and did not intend to initiate an argument or altercation with Martines.

The Organization further argues that the charging officer acted

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in an arbitrary and capricious manner. The Organization points out that the charging officer interviewed Martines about the incident at 10:30 a.m., but did not then charge Claimant; this is an indication that the charging officer considered the matter closed at that point. The Organization asserts that because Claimant was not charged until after reporting his injury at 3:00 p.m., then something other than the facts surrounding the incident, possibly a desire to avoid having a job-related injury shown on his force account records, motivated the charging officer to file the charge against Claimant. The Organization asserts that Carrier was arbitrary and capricious in removing Claimant from service, and the claim should be sustained.

Carrier contends that the record, including Claimant's admission, establishes that Claimant provoked Martines with a profane remark, then engaged in an argument with him that resulted in Claimant's sustaining a personal injury. Moreover, witnesses testified that Claimant and Martines were arguing and involved in a scuffle. Carrier asserts that the record does not support the Organization's contention that Claimant was the victim of unprovoked aggression; Claimant admittedly made a sarcastic remark about Martines, and this remark caused the altercation. Carrier points out that Claimant was not immediately removed from service because his supervisors were investigating the facts surrounding the incident; the delay in Claimant's removal from service does not mitigate Claimant's guilt.

Carrier also argues that the assessed discipline is commensurate with both the offense and Claimant's prior record. Carrier points out that Martines admitted his guilt in this matter and accepted the

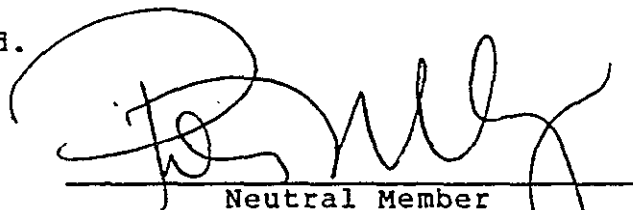
same discipline that was assessed the Claimant. Carrier therefore contends that the discipline was not arbitrary, capricious, or excessive, and the claim should be denied in its entirety.

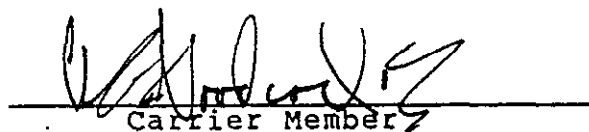
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged.

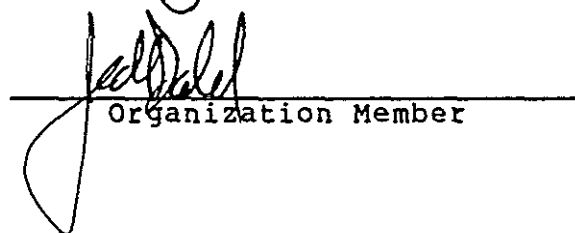
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next must determine whether the action taken by the Carrier was unreasonable, arbitrary, or capricious. In this case, a 30-day suspension of the Claimant cannot be considered unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

Award:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 12/30/87