

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 35

Docket No. NEC-BMWE-SD-1535D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated May 13, 1986, Claimant J.A. Owens was notified to attend a hearing in connection with the following charge:

Violation of NRPC Rules of Conduct, Rule 'F', Paragraph 1, which states in part: "All employees are required to conduct themselves in a courteous and professional manner in dealing with . . . other Amtrak employees. Boisterous conduct . . . and profane or vulgar language are prohibited."

Violation of NRPC Rules of Conduct, Rule 'F' Paragraph 2, which states in part: "Employees will not assault, threaten, harass, intimidate . . . or participate in any activity which could cause bodily injury to other employees . . . while on duty or on Amtrak property . . . Employees, whether on or off duty, will not disrupt or interfere with other employees in the performance of their duties."

Violation of NRPC Rules of Conduct, Rule 'L', which states in part: "Employees must obey instructions . . from Amtrak Supervisory personnel . . . Insubordinate conduct will not be tolerated."

Specification: In that on April 30, 1986 in the vicinity of M.P. 85 between the hours of approximately 2:00 A.M. and approximately 4:30 A.M. when you pushed, threatened, harassed, intimidated, failed to follow instructions, used profane and vulgar language to Foreman T.D. Kelly. An in that on April 30, 1986 between the hours of approximately 2:00 A.M. and 4:30 A.M. you threatened, harassed, used profane and vulgar language, and failed to follow instructions of Assistant Supervisor, C.L. Matlack, Jr.

The hearing was held on May 20-22, 1986. As a result of the hearing, Claimant was assessed a forty-five-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that Claimant's behavior was provoked by Track Foreman Kelly and Assistant Track Supervisor Matlack.

The Organization also argues that on the day in question, Kelly's

conduct was unprofessional, discourteous, and provocative. Moreover, Claimant stated that any discourtesy directed toward Kelly was unintentional; the Organization contends that Claimant immediately stopped any discourteous conduct when he realized that Kelly was the person involved. The Organization further argues that the initial incident between Matlack and Claimant was provoked by Matlack; the employee who witnessed the incident testified that Matlack was the first to use profane language. The Organization argues that a Carrier supervisor may not use profane language with a subordinate, then discipline that subordinate for responding in kind.

The Organization also contends that the testimony about the incident in Matlack's vehicle is too contradictory to support a finding of guilt. The Organization points out that it is not credible that Claimant would use words that are demeaning to his own race, as Matlack asserted. The Organization contends that Matlack may have been embellishing his memory of the incident. The Organization finally argues that because the record shows that Claimant was provoked to a point where he could not be expected to maintain his composure, the claim should be sustained.

Carrier further argues that there is substantial evidence in the record to support its finding of guilt. Carrier argues that the testimony of its supervisors establishes that Claimant refused to follow instructions, directed profanity at Kelly, and physically and verbally threatened Kelly. Moreover, the evidentiary record shows that Claimant also was insubordinate to Matlack, threatened Matlack and his wife, and directed profanity at Matlack. Carrier points out that the testimony of both Claimant and Claimant's witness indicates

that Claimant is guilty of misconduct.

Carrier goes on to argue that it did not improperly limit the Organization's questioning at the hearing. Carrier contends that the hearing officer properly attempted to keep the questioning on point and away from issues that were not directly related to the charges, particularly the qualifications and personnel records of the supervisors involved in the incident. Carrier also points out that there was no evidence of prior animosity, nor does the record show that any provocation occurred. Moreover, Carrier argues that Kelly's actions were appropriate because Claimant refused to obey his instructions. There was nothing in either Kelly's or Matlack's actions that caused or warranted Claimant's conduct. Carrier also asserts that Claimant knowingly directed profane comments and threats at Kelly and Matlack. Carrier contends that the record proves that Claimant was the aggressor throughout the incident.

Carrier argues that the assessed discipline is commensurate with and fully warranted by the offense and Claimant's prior record. Carrier asserts that the discipline is not arbitrary, capricious, or excessive. Carrier 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.

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. In this case, we cannot find that the 45-day suspension issued the Claimant was unreasonable,


arbitrary, or capricious given the type of behavior in which the Claimant engaged. Therefore, the claim must be denied.

Award:

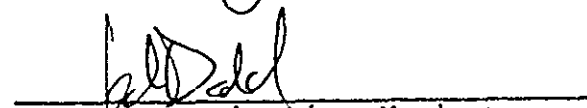
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 12/30/87

PA FED BMWE
DEC 28 1987