

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 38

Docket No. NEC-BMWE-SD-1431D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated October 10, 1985, Claimant J. McSorley was notified to attend a hearing in connection with the following charge:

Violation of the National Railroad Passenger Corporation Rules of Conduct, Rule 'I', which states in part, "Employees will not be retained in service who are . . . dishonest . . ."

Specification: In that on October 9, 1985, at approximately 11:00 p.m., you did present fraudulent [sic] proof of qualification as an Engineer Work Equipment of Model 40 Burro Crane to Supervisor, D.S. Tomlinson, and you are alleged as having lied to Supervisor Tomlinson inasmuch as you stated you were qualified as Burro Crane Operator by Equipment Engineer, Craig Rost, of Perryville, MD.

After four postponements, the hearing took place on November 27, 1985. 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 argues that Carrier failed to meet its burden of proof; Carrier has not shown that Claimant was involved in any deceptive action. The Organization asserts that Claimant widely publicized both his qualification card and the name of the Carrier official, Equipment Engineer Rost, who qualified him on the Burro crane. The Organization argues that such actions are not consistent with deceptive behavior. Moreover, Carrier's case is based entirely on Rost's statement that he did not qualify Claimant; Rost admitted, however, that he does not remember all the employees he has qualified. The Organization further argues that Rost admitted that he sometimes inks qualification cards, instead of punching them. Also, although

Rost stated that the initials on the card are not his own, the initials are indecipherable and cannot possibly be identified. The Organization therefore asserts that because Carrier failed to present any evidence that Claimant engaged in deceptive behavior, the claim should be sustained.

Carrier argues that there is substantial evidence to support its finding of guilt. Carrier asserts that Rost testified that he never qualified Claimant on the Burro crane and that the initials on Claimant's qualification card are not his. Carrier disputes the Organization's contention that Rost's inability to remember all employees he has qualified affects the weight of his testimony. Carrier argues that Rost is familiar with Claimant, recollects his past interactions with Claimant, and is certain that he never qualified Claimant on the Burro crane. Carrier also points out that Claimant's qualification card was misplaced the day after Supervisor Tomlinson questioned its authenticity; Carrier therefore argues that Claimant's publication of his qualification card does not mitigate his guilt. Carrier therefore asserts that the record establishes that Claimant's qualification card fraudulently shows that Claimant qualified on the Burro crane.

Carrier further argues that the missing page in the record was due to a clerical error. Carrier also contends that its records show that it provided the Organization's district chairman with a copy of the missing page shortly after December 12, 1985, upon the district chairman's request. Moreover, there is no indication that the omission of this page affected the fairness of the proceedings. Carrier contends that the assessed discipline is commensurate with the

offense and Claimant's prior record; the discipline is not arbitrary, capricious, or excessive. Carrier therefore argues 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.

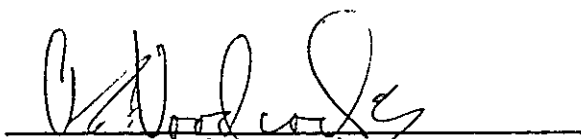
Once this Board has determined that there is sufficient evidence in the record to establish the Claimant's guilt, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, a 30-day suspension for the improper action in which the Claimant engaged is not unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

Award:


Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 12/30/87