

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 39

Docket No. NEC-BMWE-SD-1434D

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated November 14, 1985, Claimant L. Suber was notified to attend a hearing in connection with the following charge:

Violation of Amtrak Rule of Conduct F(5) in that you were observed by General Foreman Craig to be assuming an attitude of sleep in bus NM11385 at approximately 4:00 PM on November 13, 1985, while on duty in the vicinity of North Philadelphia Interlocking.

The hearing was held, as scheduled, on November 21, 1985. As a result of the hearing, Claimant was assessed a fifteen-workday suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization initially contends that because Carrier could not establish that Claimant ever received a copy of its new rule book, Carrier improperly charged Claimant with violating a rule of which he had no notice. Claimant had a copy of Carrier's old rule book; as set forth in the old book, the rule cited in the charge is a general one relating to employee safety. The Organization argues that Claimant had no knowledge of the substance of the alleged rule violation; Claimant therefore could not prepare an adequate defense to the charge. The Organization contends that by continuing the hearing despite the objection of Claimant's representative about using the new rule book, Carrier prevented Claimant from receiving a fair and impartial trial.

The Organization also asserts that Claimant is innocent of the charge. The Organization points out that Claimant testified that he

was aware of Craig's presence as soon as Craig entered the bus; Claimant could not have been asleep, or assuming the attitude of sleep, because he immediately was aware of Craig's entrance. The Organization therefore contends that the claim should be sustained.

Carrier asserts that the claim suffers from a fatal procedural flaw because Claimant did not file his initial appeal within the time limit specified in Rule 74(a) of the controlling agreement. Carrier argues that for this reason alone, the claim should be denied.

Carrier also contends that the testimony of both Craig and the Claimant establish Claimant's guilt. Craig testified that when he entered the bus, Claimant was lying down; Claimant admitted that he was lying down when Craig appeared. Moreover, Claimant stated that he did not see Craig, but rather felt Craig's movements. Carrier argues that this testimony establishes that Claimant's horizontal posture involved such deep and extreme inattentiveness that it constitutes assuming the attitude of sleep, in violation of Rule F(5).


Carrier next asserts that there is no merit to the Organization's argument that Claimant had no notice or knowledge of the substance of the rule violation. Carrier contends that Claimant did receive a copy of the new rule book; moreover, employees inherently understand that the misconduct involved herein is prohibited. Carrier further points out that there is no evidence that Claimant was hampered in preparing his defense; Claimant understood the charge and was ready to proceed at the hearing. Carrier contends that it did not violate Rule 68. Carrier also argues that the assessed discipline is commensurate with both the offense and Claimant's prior record. Carrier therefore asserts 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 assuming the attitude of sleep in a bus on November 13, 1985. The general foreman testified clearly that the Claimant was on the back seat of a bus lying horizontally with his head down when the general foreman approached at approximately 4 p.m. on that date. Said testimony is sufficient to support the guilty finding.


Once this Board has determined that a claimant was properly found guilty, 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. Sleeping on the job and assuming the attitude of sleep while working are often considered to be dismissible offenses. The Carrier was lenient in only assessing this Claimant a 15-day suspension. This Board cannot find that that action by the Carrier was unreasonable.

Award:

Claim denied.

  
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Neutral Member

  
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Carrier Member

  
\_\_\_\_\_  
Organization Member

Date: 9-28-87