

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 4

Docket No. NEC-BMWE-SD-1220D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Amtrak

FINDINGS:

On January 30, 1985, Claimant Michael Gibson was held out of service on charges that he was insubordinate, dishonest, and quarrelsome with his foreman in violation of General Rule I. A hearing was subsequently held on February 26, 1985, into whether Claimant was in violation of the rule. He was charged with a violation of Rule I, which states, in part:

Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious . . .

The Carrier contended that:

In that on January 30, 1985, at approximately 3:30 a.m., you used profane and vulgar language when instructed by your Foreman, Mr. Luther Cooper, to load pads near the T.L.M. near M.P. 75.5 on #3 Track.

Subsequent to the hearing, the Claimant was found guilty; and his 14-day suspension was upheld.

The Organization contends that the Carrier failed to prove the charges against the Claimant by a preponderance of the evidence. The Organization argues that there is insufficient evidence that the Claimant was in violation of the rule; and the claim should have been sustained.

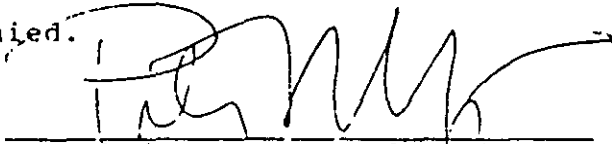
The Carrier argues that the record is clear that the Claimant was abusive toward his foreman and used profane language

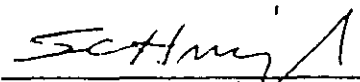
directed at his foreman. The Carrier contends that the discipline was appropriate, and the claim should be denied.


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 rule violation with which he was charged. We find that since the Claimant had received a 14-day suspension for an altercation with a fellow employee less than a year before this incident, the Carrier was not unreasonable, arbitrary, or capricious in its assessment of discipline in this case.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Union Member

Date: 12.30-86