

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 47

Docket No. NEC-BMWE-SD-1898D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

STATEMENT OF ISSUE: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman M.G. Kelly for alleged violation of Rule F-2 of the National Railroad Passenger Corporation (Amtrak) Rules of Conduct, was arbitrary and unwarranted (System File NEC-BMWE-SD-1898D).
2. The Claimant shall be reinstated to service, his record shall be cleared of the charges leveled against him and he shall be compensated for all earnings lost as a result of his dismissal."

FINDINGS:

Claimant M.G. Kelly was employed as a trackman by Carrier at its Odenton MW Base. On June 10, 1987, Claimant was notified to attend an investigation of the charge:

Violation of the National Railroad Passenger Corporation, Amtrak, Rules of Conduct, Rule F-2 which reads:

"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 June 4, 1987 at River Interlocking at approximately 12:10 p.m. you poked Mr. W. Church, Foreman, in the chest and grabbed Mr. Church by the neck and spit in his face.

The hearing was held on June 25, 1987, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

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


Consequently, the Carrier was within its rights to impose discipline.

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. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In the case at hand, the Claimant was found guilty of engaging in a very serious offense of assaulting a supervisor. In many cases, that offense leads to discharge. However, in this case, the Claimant's eleven (11) years of service require that he be given one last chance to reform his behavior. In other words, it was unreasonable for the Carrier to terminate the Claimant without first issuing him a lengthy suspension.

This Board finds that the action taken by the Claimant deserved a one (1) year suspension, and we hereby vacate the dismissal and order that the Claimant be returned to work, without back pay, on the one (1) year anniversary of his dismissal. The Claimant is to be admonished that any further wrongdoing will lead to discharge.

Award:

Claim sustained in part. The termination of the Claimant is reduced to a one (1) year suspension, without pay, in accordance with the above decision.



Neutral Member



Carrier Member



Organization Member

Date: 4-12-88