

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 5

Docket No. NEC-BMWE-SD-1235D

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

FINDINGS:

On December 10, 1984, Claimant John P. White was notified by the Carrier to attend an investigation into charges that the Claimant failed to furnish medical records as required by written instructions to him in letters dated November 1, 7, and 19, 1984, which allegedly caused an unnecessary delay in the decision as to whether Claimant could return to work. After two postponements, said hearing was held on January 30, 1985, after which Claimant was found guilty of violation of Rules I and K, relating to insubordination and failure to comply with the supervisory instruction. Claimant was assessed a 15-day working suspension.

The Organization contends that there was insufficient evidence in the record to support the guilty finding. The Organization points to evidence that the Claimant did request his personal physician to release the medical records to the Carrier and that his doctor could not locate the records. The Organization further contends that the Claimant agreed to cooperate with the Carrier in the future. Hence, the Organization contends that the claim should be sustained.

The Carrier argues that the record contains sufficient evidence to support the finding that the Claimant was guilty of the offense with which he was charged. Claimant states that the record is

986-5.

clear that the Carrier requested, on several occasions, that Claimant release his medical records to the Carrier's physician for analysis in order that a decision be made regarding Claimant's return to work. Claimant contends that the records were never released. Carrier states that Claimant was given an order to produce the records but did not; and, therefore, 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 failing to follow the instructions of the Carrier with respect to the release of his medical records. Hence, the Carrier had sufficient basis to take disciplinary action against the Claimant.

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. Normally, this Board will not set aside discipline unless we find that the Carrier's action was unreasonable, arbitrary, or capricious. In the case at hand, the Claimant had more than ten years of service and had incurred only minor discipline over that lengthy period. His last discipline had been a letter of instruction for failure to follow instructions in September 1984. Consequently, a 15-day working suspension was an unreasonable and arbitrary discipline; and we hereby reduce that discipline to a written letter of warning, advising the Claimant that further violations of this kind will result in more serious discipline.

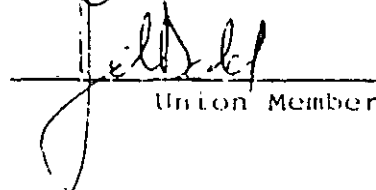
AWARD:

Claim allowed in part. The 15-day working suspension is

hereby reduced to a written letter of warning. However, Claimant must make available to the Carrier some documentation as to his medical condition.


Chairman, Neutral Member


Carrier Member


Union Member

Date: 12-30-86