

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 78

Docket No. NEC-BMWE-SD-2066D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

Claimant D. Brown was employed as a trackman by Carrier at its Penn Coach Yard in Philadelphia, Pennsylvania. On February 9, 1988, Claimant was notified to attend a formal investigation in connection with the following charge:

Violations of Amtrak's Rules of Conduct, Rule "K", that part which reads, "misappropriation . . . of Amtrak' . . . property . . . is prohibited. Employees must use Amtrak . . . property . . . with care and economy and protect them from theft or abuse by others."

Violation of Amtrak's Rules of Conduct, Rule "O", that part which reads, "Employees must . . . attend to their duties during assigned working hours. Employees may not be absent from their assigned duty or engage in other than Amtrak business while on duty . . . without permission from their supervisor."

Specifications: (1) In that on Thursday, February 4, 1988 at approximately 7:30 P.M., you did not return from your lunch break with Amtrak vehicle #AAl3503, which was entrusted in your care, nor did you return this vehicle to Amtrak property. When this vehicle was recovered on February 5, 1988, track equipment, including two Punjair tamping guns, was missing from the vehicle. (2) In that on Thursday, February 4, 1988, at approximately 7:30 P.M., you failed to report to your assigned work location at the conclusion of your authorized lunch break and did not return to your headquarters at the end of your tour of duty. During this time, you did not notify Amtrak of your whereabouts or the reason for your absence and did not perform any work for Amtrak.

The hearing took place on February 23, 1988, 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 in the record to support the finding that the Claimant was guilty of violation of Amtrak Rules

of Conduct Rule K and Rule O as charged in the Notice of Investigation. Therefore, the Carrier had sufficient reason to impose discipline on 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. This Board will not set aside a Carrier's imposition of discipline unless we find it to have been unreasonable, arbitrary, or capricious. In the case at hand, the Claimant clearly engaged in wrongdoing by not returning to work after his lunch period. He also was rather careless in protecting the Carrier's property. However, it appears that once the Carrier's property was stolen, he spent a great deal of time attempting to retrieve it and did not in any way misappropriate the Carrier's property or do anything of a dishonest nature. Therefore, upon a thorough review and analysis of the record and the facts in this case, this Board must find that the Carrier acted unreasonably in terminating the Claimant's employment. The Claimant has been employed by the Carrier since February 1976, and his prior service record shows only a 45-day suspension for sleeping on the job in 1982 and two 10-day suspensions for unauthorized absenteeism in 1983. The Carrier did not have a sufficient basis to terminate the Claimant, and the termination shall be reduced to a lengthy suspension. The Claimant shall be reinstated upon issuance of this award.

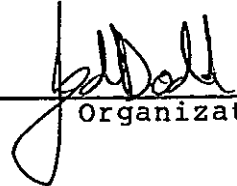
Award:

Claim sustained. The termination of the Claimant is reduced to a lengthy suspension. The Claimant is to be reinstated without back

pay.


Neutral Member


Carrier Member


Organization Member

Date: 12/30/88