

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 96

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO :
DISPUTE: NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) -
NORTHEAST CORRIDOR

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

1. The dismissal of B & B Mason D. Haines for violation of NRPC Rules F1, F2, F3 and K on dates stipulated in the Notice of Charges, was arbitrary, capricious, without just and sufficient cause, on the basis of unproven Charges and in violation of the Agreement (System File NEC-BMWE-SD-2337D).
2. The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant D. Haines was employed as a B & B Mason by Carrier on August 30, 1988 Claimant was instructed to attend a trial in connection with the following charge:

- "1) In that on or about May 25, 1988, you removed an Amtrak burning torch from a company vehicle, and on or about May 26, 1988, you returned it.
- 2) In that between the dates of May 12, 1988 and June 16, 1988, you removed stain from the B & B storeroom at Lancaster, PA, and the stain was later recovered by Amtrak Police, after being purchased at Harry's Auction, as part of items sold by Bertha Haines."

The hearing was held on November 9, 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 removed the torch from a company vehicle and also some cans of stain from the company storeroom.

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 that action to have been unreasonable, arbitrary or capricious.

The Claimant in the case at hand had 11 and 1/2 years of seniority. Although he was found guilty of some very serious offenses, this Board must find that, given his lengthy seniority and his relatively good discipline record, the Carrier acted unreasonably when it terminated his employment. This Board finds that the Claimant should have been issued a lengthy suspension for the wrongdoing as a final warning that any further wrongdoing on his part would lead to his dismissal. This Board must order that the Claimant be reinstated to service but without back pay.

AWARD

Claim sustained in part. Claimant is to be reinstated to service without back pay.



Neutral Member

Patricia A. Engle
Carrier Member

Jim Dadd
Organization Member

Date: 10-17-89