

Special Board of Adjustment No. 987

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees)	Case No. 4
)	
vs)	
)	Award No. 4
National Railway Passenger)	
Corporation)	

STATEMENT OF CLAIM

That the ten (10) day suspension assessed the Claimant, William J. McCarthy Jr. on June 9, 1986 was arbitrary and unjust and that the Claimant be reimbursed for time held out of service.

FINDINGS

On May 20, 1986 the Claimant was advised to attend a trial to determine facts and place responsibility, if any, in connection with his alleged violation of Rules A, B, F(1) and L of the Carrier's Rules of conduct. The Claimant was specifically charged with the following:

...on Tuesday, May 20, 1986 at approximately 8:25 AM you repeatedly refused to wear a sandblasting safety helmet, refused to wash such safety helmet prior to wearing, and refused to perform you assigned duties of sandblasting at the Hartford Viaduct as ordered by Foreman D. H. Lounder and Assistant Division Engineer T. Karasay. Further, your actions caused a delay of approximately 30 minutes to the sandblasting work being accomplished by your Gang U542. You were also discourteous to Foreman Lounder during the course of events on this date.

After the trial was held on May 28, 1986 the Claimant was advised by the Carrier under date of June 9, 1986 that he had been found guilty as charged and he was assessed a ten day suspension. This included the eight days already served from May 20 through 29, 1986 and two days held in abeyance to be served on future dates "...to be determined". The discipline was appealed on property up to and including the highest Carrier officer designated to hear such before this case was docketed

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before this Special Board of Adjustment for final adjudication.

The Rules at bar read as follows, in pertinent part:

Rule A

Employees must understand and obey the Rules of Conduct.

Rule B

Safety is of first importance in the operation of the railroad and therefore is the most important aspect of an employee's duties. Employees must understand and comply with safety regulations and practices pertinent to their class or craft of employment.

Rule F(1)

All employees are required to conduct themselves in a courteous and...professional manner in dealing with... other Amtrak employees.

Rule L

Employees must obey instructions, directions, and orders from Amtrak supervisory personnel and officers except when confronted by a clear and immediate danger to themselves, property, or the public. Insubordinate conduct will not be tolerated.

Accord to testimony at the trial by the Bainter Foreman who was the Claimant's supervisor on May 20, 1986 he told the Claimant that he was "...going to be sandblasting for the day to which (the Claimant) replied he wasn't". According to this witness, the following dialogue took place between he and the Claimant:

"...he said he would not put his head in that filthy helmet, blasting helmet, to which I replied take the helmet, strip it down, wash it and I had a new shroud to put on it. At that he told me you wash a toilet bowl out but you don't put your head in it. Then he stated he would not do any blasting until he had a new hood for himself.

At that point the Foreman informed the office of the Assistant Engineer of the Structures' Department about the refusal of the Claimant to use the helmet and do sandblasting and by order of that Engineer

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the Claimant was told to clock off and go home. After personally requesting to talk to the Engineer by phone the Claimant did so and then went home. A statement issued by the Foreman of Gang U542 on May 20, 1986, which is part of the record before the Board, states substantially the same thing as the testimony by this same employee. At the hearing the Engineer testified to basically the same facts, as he understood them from the Foreman, which transpired on the morning of May 20, 1986. Since the Claimant refused to wear the helmet the Engineer did give the order that the Claimant go home.

At the trial the Claimant testified that he refused to wear the helmet because it was "...dirty (and) unsanitary". When asked why he refused to clean the helmet when instructed to do so the Claimant testified that he felt that there were no "...facilities to clean it the right way". The Claimant specified this to mean that there was not adequate soap to wash the helmet, that there were no paper towels, and that the wash basin in the regular B&B restroom was quite small for the helmet and in his view "...worse than a sewer". The Claimant's description of the lack of facilities to clean helmets is not contradicted by the Carrier in the record. Further, it appears that a larger industrial sink in the trainmaster's area was not commonly used by covered employees

There is no question that the Claimant was insubordinate on the morning of May 20, 1986 when he refused to work as instructed and arbitral forums in this industry have ruled on many occasions that insubordination is a serious infraction (Second Division 8223, 8390 inter alia). The Claimant testified, however, that he did not wish to refuse to work, he just did not want to wear what he considered to be an unsanitary helmet. Any mitigating circumstances relative to this case must center on the evidence present in the record to support this contention of the Claimant. First of all, the helmet was an old one. The Assistant Supervisor of Structures testified that it could have been up to five years old. Secondly, the Board notes that the Carrier did issue individual shrouds after the Claimant was cited and that the

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the particular shroud in the helmet in question on the day that the Claimant refused to wear the helmet belonged, in fact, to the other employee who took the Claimant's place after the Claimant was instructed to go home. In addition, the helmet in question had a history of problems and the air intake hose did not always work properly, including the day on which the Claimant refused to use it. According to the employee who took the Claimant's place on May 20, 1986:

"...we always (had) a problem with the air, you get it sometimes, sometimes you don't. You have to suit down to make your adjustments. If you loose the air the thing fills up and you can't breathe and see nothing.

According to information provided in the record by the Assistant Division Engineer, who did a test of the helmet after the Claimant's refusal to wear it, everything appeared to work okay "...with the exception that towards the end of the day (that the fellow employee who took the Claimant's place wore it), the air supply to the helmet was intermittent (although the employee wearing it) did not know the reason for this". The reason, evidently, was because the helmet was malfunctioning and management had not been able to correct this. This same witness entered into the record the following information:

...approximately one week (before the May 20, 1986 incident at bar) the employees at Hartford Viaduct complained that air supply into the helmet (sandblasting) was not adequate and that the plastic shield was fogging....we replaced an air filter and a leaky air hose which seemed to correct the problem to a degree. (emphasis added).

The Claimant was aware of these ongoing problems with the helmet in question.

The record before the Board, therefore, supports the conclusion that the Claimant was guilty of insubordination. It also supports the conclusion, however, that the act of subordination took place in a context of considerable extenuating circumstances. The specific facts of record show the Carrier to have been somewhat lax with respect to the particular helmet in question, and with respect to

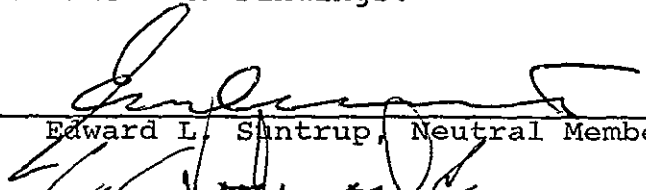
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operating procedures for keeping the helmets clean. Additional information of record also shows that this incident was not an isolated one but that the Carrier had had what can properly be called safety infraction problems in 1985 and again in 1986. The allegations of record in 1986 involve issues similar to those which are related to this case.

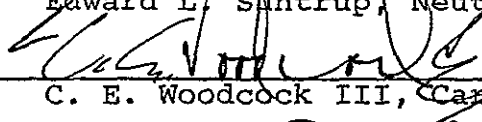
On the record taken as a whole, therefore, the suspension received by the Claimant on June 9, 1986 shall be reduced to a two (2) day suspension and the Claimant shall be compensated for all other time lost while held out of service. Records in the Claimant's personal file shall be changed to reflect this decision by the Board. All compensation due to the Claimant shall be paid within thirty (30) days of the date of this Award.

AWARD

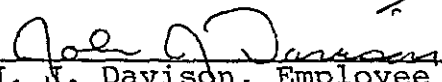
Claim sustained in accordance with the Findings.



Edward L. Santrup, Neutral Member



C. E. Woodcock III, Carrier Member



J. J. Davison, Employee Member

Date: 11/3/87