

SPECIAL BOARD OF ADJUSTMENT NO. 957

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SOUTHEASTERN PENNSYLVANIA

TRANSPORTATION AUTHORITY

"AUTHORITY"

vs.

BROTHERHOOD OF MAINTENANCE OF

WAY EMPLOYES

"ORGANIZATION"

AWARD NO. 22

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STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-87-6-F12) that:

The discipline assessed Track General Helper W. Crippen was based on opinion and not fact in that the charges of June 2, 1987 did not cite any alleged rule violations and there was no precise reason given for the discipline.

REMEDY:

Claimant, W. Crippen shall be compensated for all lost wages, including overtime, on account of this discipline, and his<sup>23</sup> record shall be expunged of any reference to said discipline.

OPINION OF THE BOARD

Claimant, W. Crippen, was ultimately given a one day suspension for alleged substandard job performance.

The basic facts are not complex. Claimant is a track general helper with the Authority. On or about June 1, 1987, Claimant was assigned to the Fort Washington undercut project and temporarily assigned to the work gang supervised by Daniel Koviack. Throughout the day, Koviack was displeased with the Claimant's performance. According to Koviack, a minimum of five

times during the day the Claimant was not in his assigned location, or if he was working he was doing so slowly. On several occasions during the day, Koviack told the Claimant that he was not happy with his work, and suggested that he work harder. The final incident of the day, which triggered discipline, concerned Koviack assigning the Claimant and one other man to move a barrel. While the other employee did get in position, the Claimant refused to move the barrel and complained about mud in the area. Koviack told the Claimant to straddle the barrel and thereby avoid the mud. The Claimant did not, however, move the barrel. Koviack then decided to assess discipline.

Koviack determined to give the Claimant a verbal warning. Upon review of the matter by Koviack's superiors, however, it was determined that based upon the Claimant's past work record, a three day suspension was appropriate. The Authority informed Claimant of this three day suspension on or about June 8, 1987.

The Organization processed a grievance on the Claimant's behalf. The Authority ultimately agreed to reduce the discipline from a three to a one day suspension. The Organization still maintained that no discipline at all was appropriate, and therefore placed the matter before this Board.

The Authority maintains that the Claimant, at the very least, did neglect his duties, and that his work performance is less than satisfactory and as such has a detrimental impact on the efficiency and effectiveness of his fellow workers. The Authority further contends that the one day suspension was

lenient in light of the Claimant's blatant refusal to perform his work assignment and his previously poor work record.

The Organization asserts that even a reduced discipline of a one day suspension is unacceptable based upon the record. The Organization maintains that the Claimant was not afforded his right to know the cause of the discipline being assessed by being afforded a clear and timely synopsis on the Report of Interview. The Authority's lack of sufficient information and its reliance on a vague report from the foreman is further revealed, according to the Organization, by confusion over the date the Claimant's alleged substandard job performance occurred. Finally, the Organization argues that the Carrier has failed to meet its burden of establishing facts to justify the charge of substandard performance.

The Board has determined that the claim must be denied.


The Board rejects the Organization's forceful arguments that the claim should be sustained because the Carrier did not provide sufficient information concerning the charges. The Board is satisfied that the Claimant was aware of the date and incident involved in this matter, particularly since Koviack was not his regular supervisor. The testimony of Koviack at the Board hearing established that the Claimant repeatedly failed to perform his work on the date in question in a proper fashion, was warned several times to work harder, and finally refused a direct order to move a barrel.

In these circumstances, a one day suspension was justified.

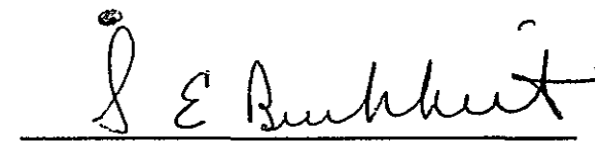
The Authority committed no procedural error warranting a sustaining of the claim. While the Organization has been successful in having the Claimant's discipline reduced from a three day to a one day suspension, the Claimant's own actions and previous work record, which contains a number of previous disciplinary actions, precludes a further lessening of the penalty.

AWARD

Claim denied.

  
R. B. BIRNBRAUER  
Authority Member

  
W. E. LA RUE  
Organization Member

  
SCOTT E. BUCHHEIT  
Neutral Member