

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 103
Docket No. NEC-BMWE-SD-2345D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

DISPUTE: Claim of the Organization that:

- 1) Carrier violated the time limits for rendering the decision, assessing discipline and issuing a copy of trial transcript;
- 2) Mr. Bransfield should not have been removed from service and that the discipline was harsh, arbitrary and capricious.

FINDINGS:

Claimant Walter Bransfield was employed as a M/W Repairman by Carrier. Claimant was notified that he was removed from service as of Thursday, November 17, 1988, and directed to attend an investigation on December 1, 1988, in connection with the following charge:

- 1) Violation of the Carrier's Rules of Conduct B and L. The Claimant had supervised repair on a ballast regulator, and he failed to take appropriate action to report or repair a problem he knew existed with a wheel on the regulator.

The trial was held on December 1, 1988, and as a result, Claimant was notified by letter dated December 15, 1988, that he was found guilty of violating Rule B and assessed the discipline of time held out of service and permanent disqualification as a M/W repairman foreman. On appeal, the Carrier reduced the permanent disqualification assessed to a six month disqualification. The Organization thereafter filed a claim on Claimant's behalf, challenging his discipline.

This Board has thoroughly reviewed the procedural issues raised by the Organization and we find them to be without merit.

With respect to the substantive question, this Board has reviewed

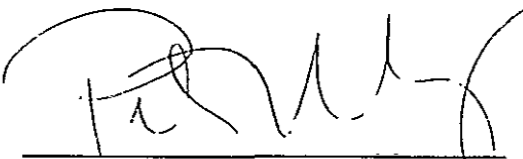
the record and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to take the appropriate action to report or repair a problem that he knew existed with a wheel on the ballast regulator. This Board has thoroughly reviewed the arguments of the Organization, and despite the validity of some of the Organization's arguments, we still believe that there is sufficient evidence in the record to support the finding of the Claimants violations of Rules B and L.

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 the carrier's action to have been unreasonable, arbitrary, or capricious.

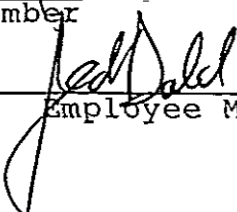
In the case at hand, the Claimant had previously received two counselling letters relating to his work performance. Although he was previously permanently disqualified from his foreman position, the Carrier has subsequently reduced that permanent disqualification to a six month disqualification. Given the nature of the wrongdoing and the previous record of the Claimant, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the claim must be denied.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 2/22/90