

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 109

Docket No. NEC-BMWE-SD-2419D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

DISPUTE: Claim of the Organization that:

- 1) The dismissal of C.L. Parham for violation of NRPC Rule F(3) on July 7, 1977, was on the basis of unproven charges and in violation of the Agreement;
- 2) The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant C.L. Parham was employed as a trackman by Carrier.

By Notice of Investigation dated January 23, 1989, Claimant was charged with the following:

- 1) In that on January 8, 1989, you reported for duty at approximately 11:00 p.m. at Odenton MW Base and were required to submit to a urinalysis drug screen which was tested and confirmed as positive for mood changing substances.
- 2) In that on your employment application signed and dated July 7, 1977, you falsely answered no to that portion which asks "Have you ever been convicted of a felony?"

The trial was held on April 10, 1989, and as a result Claimant was found guilty of the charge of violation of Rule of Conduct F(3) and assessed the discipline of dismissal in all capacities. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

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

This Board has thoroughly reviewed the evidence and testimony in

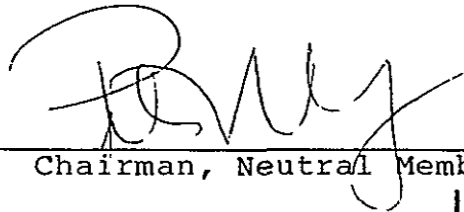
this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rule F(3) when he falsely answered "no" on his employment application to the question asking him if he had ever been convicted of a felony. It has been established in the record that in 1973 the Claimant was found guilty of possession of a controlled substance and received a sentence which included a suspended jail term and probation for two years. Moreover, the Claimant admitted at the hearing that in 1974 he was convicted of aggravated assault and that that was a felony. The Claimant's explanation that he was writing fast does not justify his wrongful statement. He completely left these two incidents off the application even though he included others.

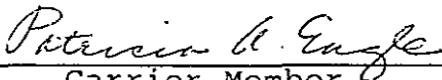
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find the carrier's action to have been unreasonable, arbitrary, or capricious.

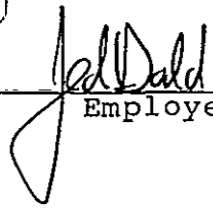
Falsifying an employment application has been held to be a dismissable offense on numerous occasions in the past. This Board cannot find anything in the record to justify overturning the Carrier's decision in this case. Therefore, the claim must be denied.

Award:

Claim denied.

  
Chairman, Neutral Member

  
Carrier Member

  
Employee Member

Date: 2/22/90