

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 111

Docket No. NEC-BMWE-SD-2379D

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

DISPUTE: Claim of the Organization that:

- 1) The Carrier failed in its burden of proof to show the claimant violated either of the rules charged;
- 2) The claimant should be exonerated of the charge, compensated for all compensation loss due to his discipline and the discipline be expunged from his record.

FINDINGS:

Claimant J. Pollio was employed as a track foreman by Carrier.

By Notice of Investigation dated December 12, 1988, Claimant was charged with the following:

On Thursday, December 8, 1988, at approximately 8:00 a.m., you advised the Carrier that you had actually sustained an injury on Amtrak property while disembarking from the dining car steps in the tie gang camp facility located at Durante Yard.

Whereas, to the contrary, you had previously advised ARASA Supervisor Mr. Joseph Traina, through a telephone conversation, on Wednesday, December 7, 1988, at approximately 6:00 p.m., that you were in fact suffering from pain and other complications to your back from a non-job related injury.

The trial was held on February 9, 1989, and as a result Claimant was dismissed in all capacities. On appeal, the Carrier reduced the discipline from dismissal to suspension equal to the time held out of service. The Organization thereafter filed a claim on Claimant's behalf, challenging his discipline.

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 dishonesty when

986-111

he advised the Carrier that he had sustained an on-the-job injury on Amtrak property on December 8, 1988. The record clearly reveals that he had previously advised a supervisor that he was suffering pain and complications from a non-job related injury.

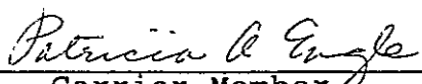
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find the carrier's action to have been unreasonable,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

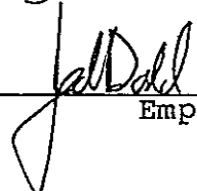
In this case, the Carrier has already reduced the discipline from dismissal to a suspension equal to the time held out of service. This Board cannot find any reason to change the Carrier's action in this case. Therefore, the claim must be denied.

Award:

Claim denied.

  
\_\_\_\_\_  
Chairman, Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Employee Member

Date: 2/22/90