

SPECIAL BOARD OF ADJUSTMENT NO. 986

CASE NO. 115

DOCKET NO. NEC-BMWE-SD-2469D

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO :

DISPUTE: NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

DISPUTE: Claim of the System Committee of the Brotherhood:

1. The thirty-calendar day suspension and disqualification of Claimant David Kerl from operating all Amtrak equipment for alleged violation of N.R.P.C. (Amtrak) NORAC Operating Rules and Special Instructions Rule 806 and N.R.P.C. (Amtrak) Rules of Conduct (NRPC 2525) (9/85) Rule B on February 27, 1989, was unwarranted.

2. The Carrier failed in its burden of proof to show the Claimant violated the rules charged, and the discipline assessed is harsh, arbitrary, capricious, and without just cause.

4. The Claimant should be exonerated of the charge, compensated for all compensation loss due to the discipline, and the discipline expunged from the Claimant's record.

FINDINGS:

Claimant David Kerl was employed by the Carrier as an Engineer Work Equipment B Operator at Philadelphia, Pennsylvania.

On March 2, 1989, the Carrier notified the Claimant of the following charges:

Violation of N.R.P.C. (Amtrak) NORAC Operating Rules and Special Instructions Rule 806

Violation of N.R.P.C. (Amtrak) Rules of Conduct (NRPC 2525), dated 9/85, Rule B

Specification No. 1: On Monday, February 27, 1989, at approximately 3:00 p.m., on Conrail Main Line, at approximately M.P. 9.5, you removed Pettibone #A47905, that you were operating, from No. 2 track Delair Branch and fouled No. 1 track, Delair Branch without permission.

After one postponement, the disciplinary investigation took place on April 13, 1989. On April 26, 1989, the Carrier notified the Claimant that he was guilty of all charges and was assessed discipline of a thirty-calendar day suspension and disqualification from operating all Amtrak equipment. On May 2, 1989, the Claimant filed an appeal of the discipline imposed upon him; and on June 2, 1989, the Carrier reduced the suspension to the time the Claimant had already served and the disqualification to a one-year period. Thereafter, the Organization filed a claim on Claimant's behalf, further challenging his discipline.

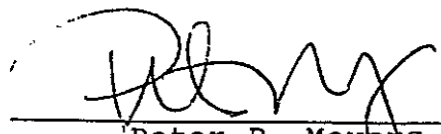
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the rule violations with which he was charged. The Claimant has admitted that he fouled the Number One Track without authority and without notifying anyone. The Claimant's actions were unsafe and a definite violation of the rules.

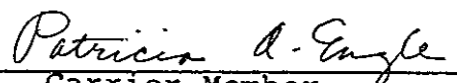
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

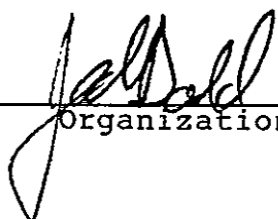
In the case at hand, the Carrier has already exercised leniency by reducing the discipline to time held out of service and disqualification for one year. This Board cannot find that the disciplinary action ultimately taken against the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

Award

Claim denied.

  
Peter R. Meyers  
Neutral Member

  
Patricia A. Engle  
Carrier Member

  
J. J. Bald  
Organization Member

10-1-90