

SPECIAL BOARD OF ADJUSTMENT NO. 986

CASE NO. 118
DOCKET NO. NEC-BMWE-SD-2341D

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TO :

DISPUTE: NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

DISPUTE: Claim of the System Committee of the Brotherhood:

1. That the dismissal of B & B Mechanic Foreman Craig Warwood for violation of N.R.P.C. Rule K between April 1988 and August 1988 was arbitrary, capricious, without just and sufficient cause, 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 charges leveled against him, and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant Craig Warwood was employed by the Carrier as a B & B foreman within the Bridge and Building Subdepartment at Lancaster, Pennsylvania.

On August 11, 1988, the Carrier notified the Claimant of the following charge:

Violation of N.R.P.C. Rules of Conduct Rule K

Specification: That you removed Company materials from Amtrak property for your personal use at various times between April 1988 and August 1988. This was documented by Amtrak Police as a result of their investigation, of which Division Engineer was made aware on August 10, 1988.

After several postponements, the disciplinary investigation was held on October 11, 1988. On October 26, 1988, the Carrier notified the Claimant that he was found guilty of the charge and was assessed discipline of dismissal in all capacities effective immediately. On November 1, 1988, the Claimant filed an appeal of his discipline,

which appeal was denied by the Carrier in January 1989. Thereafter, the Organization 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.

With respect to the substantive question, 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 removing Carrier materials from Carrier property and converting them to his own use. Specifically, the record is clear that the Claimant stole Amtrak paint and used the stolen material to paint his home, barn, garage, and shed.

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.

Although the Claimant in the case at hand has no prior disciplinary record, this Board has held on numerous occasions in the past that theft can be a dismissible offense even the first time. The Carrier has a right to ensure that it has an honest work force. The record is clear that this Claimant definitely stole paint from the Carrier and then put it on his home for all to see. Given that type of behavior on the part of the Claimant, this Carrier did not act unreasonably when it terminated his employment. Therefore, the claim will be denied.

Award

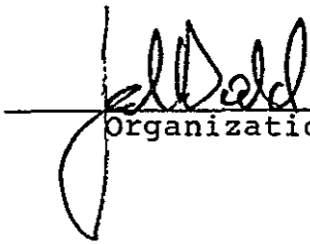
Claim denied.



Peter R. Meyers
Neutral Member



Patricia A. Engle
Carrier Member



Organization Member

10-1-90