

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Case No. 126

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The permanent disqualification, later reduced upon appeal to a two-year disqualification, of Claimant Morris Combs from the position of electric arc welder on August 17, 1989, was unwarranted.
2. The Claimant did not receive a fair and impartial trial nor an accurate review of the transcript.
3. The charges against the Claimant were vague.
4. The Carrier violated Rule 69 of the current agreement. The Carrier held the Claimant accountable to a standard that he was never properly trained in. The Claimant was improperly supervised by Carrier supervisors and should not have been disciplined for his actions on April 3, 1989.

FINDINGS:

Claimant Morris Combs was employed by the Carrier as an electronic arc welder.

On April 18, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of Amtrak Rules of Conduct, Rule D, which states, "Employees must understand and obey Company and departmental policies, procedures, and special instructions.

Specifications: In that on April 3, 1989, at approximately 1:15 p.m., you were disqualified pending outcome of a hearing regarding your failure

to comply with Amtrak's policy of welding maganese steel frogs with regards to your work on the Kellogg's frog.

1 After two postponements, the hearing took place on June 20, 1989, and later reconvened on August 2, 1989, after one postponement. On August 17, 1989, the Carrier notified the Claimant that he had been found guilty of the charges against him and was being assessed discipline of a permanent disqualification as an electric arc welder, effective immediately.

On August 22, 1989, the Claimant appealed his discipline. On September 29, 1989, the Carrier upheld its decision but reduced the Claimant's discipline to a disqualification as an electric arc welder for a period of two years, commencing on April 3, 1989, and ending April 3, 1991, with the requirement that, after that period, the Claimant would then attempt to requalify for that position. The Organization, however, filed a claim on the Claimant's behalf, challenging his disqualification on the grounds that the Carrier violated Rule 69 of the current agreement; that the Carrier held the Claimant accountable to a standard that he was never properly trained in; and that the Claimant was improperly supervised by Carrier supervisors and should not have been disciplined for his actions on April 3, 1989. The parties being unable to resolve the issues, this matter came before this Board.

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 failing to properly perform his welding responsibilities on April 3, 1989.

The record reveals that the Claimant was given instructions to perform certain repairs to a Kellogg Frog and that after they were allegedly done, his supervisor discovered that the bolts were loose and that there were cracks still remaining. Also, the riser had not been welded properly. Consequently, the Carrier had a sufficient basis to issue discipline.

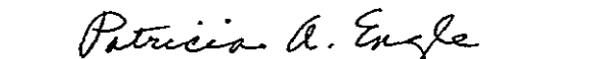
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary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

In the case at hand, the Claimant was disqualified for a period of two years from his position as a welder. However, given the length of service of this employee, 14 years, and the fact that he had no previous problems with his work, this Board finds that a two-year disqualification was unjustified and must be set aside. This Board finds that a more appropriate disqualification would have been a one-year disqualification and we hereby find that the disqualification must end on August 17, 1990. The Claimant should return to work as of August 17, 1990, and if he completes his retraining as a welder and is performing well enough to be assigned to his old position, he should be so assigned. The Carrier must make sure that he is operating properly before it puts him back to work, but his disqualification shall be commuted from two years to one year.

AWARD

Claim sustained in part. The disqualification of the Claimant as a welder shall end on August 17, 1990 and Claimant shall be returned to work as a welder as soon as he successfully completes retraining and meets the Carrier's expectations that he is performing well enough to be assigned.



PETER R. MEYERS
Neutral Member

Patricia A. Engle
Carrier Member

J. B. Ball
Organization Member

Date: 8-8-91