

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 132

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. Claimant Michael J. Waters' ten (10) calendar day suspension, effective October 19, 1989, was unwarranted.
2. The Carrier has failed to overcome the procedural flaws in this case.
3. The hearing should not have been held in the Claimant's absence.
4. The Carrier failed to prove that the Claimant was aware of his injuries prior to the date he reported them. The Carrier has not met the required burden of proof.
5. The Claimant should be exonerated. His record should be expunged concerning this matter.

FINDINGS:

Claimant Michael J. Waters was employed by the Carrier as a trackman.

On August 21, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of Rule 4000 of Amtrak's Safety Rules and Instruction . . .

Violation of Rule C of Amtrak's Rules of Conduct . . .

Specifications: In that you allegedly sustained a personal injury on Monday, July 31, 1989, at approximately 4:00 a.m. but did not report it to any member of supervision until Thursday, August 10, 1989, at approximately 3:15 p.m.

After two postponements, the hearing took place on October 5, 1989. The Claimant was not present, but was represented by the Organization. On October 19, 1989, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a ten (10) calendar day suspension. On November 13, 1989, the Claimant appealed his discipline.

The Organization filed a claim on the Claimant's behalf on December 8, 1989, challenging his suspension. The Organization claims that the Carrier violated Rule 68 of the collective bargaining agreement and that the Carrier failed to prove that the Claimant was aware of his injury before he properly reported it to his supervision and, thus, did not violate any Carrier rules. The Carrier thereafter denied the appeal on the grounds that the Claimant failed to report his injury immediately on the day in question, even though the Claimant's supervisor inquired as to whether or not the Claimant sustained an injury on July 31, 1989. The Carrier claims that for the Claimant to have reported his injury a week after the incident is in clear violation of its rules. 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 violating Rule 4000 of the Amtrak Safety Rules and a violation of Rule C when he sustained a personal injury on July 31, 1989 and did not report it for nearly 10 days. Although the Claimant argues that

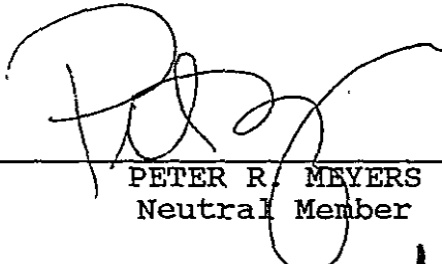
he did not know that it was a serious enough injury, he should have reported any injury no matter how small.

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 received a 10-day suspension for his wrongdoing. Given the nature of this offense, a 10-day suspension is a rather lenient discipline. This Board cannot find that the Carrier acted unreasonably. Therefore, the claim will be denied.

AWARD

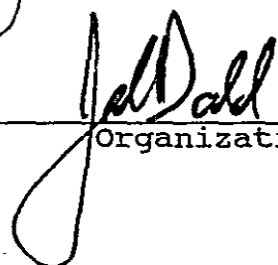
Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Date: 8-8-91