

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 134

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Truck Driver R. D. Pierce for violation of NRPC Rules B, G, K, 4002 and 4233 on September 15, 1989, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-2548D).
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 Ricky D. Pierce was employed by the Carrier as a truck driver.

On September 25, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Alleged violation of the National Railroad Passenger Corporation (Amtrak) Rules of Conduct, NRPC 2525, dated (9/85), Rule B, Rule G, and Rule K. Also alleged violation of the Amtrak Maintenance of Way Employees Safety Rules and Instructions, (NRPC 1908) effective January 1, 1984, Rule #4002, and Rule #4233, and Section 22 - Sub Section 101, paragraph A, a, b, and c . . .

Specifications: In that on Friday, September 15, 1989, at approximately 2:00 p.m. on Joppa Farm Rd. at the intersection of US Route 40, in Joppatown, Md., you failed to control the speed of the vehicle you were driving, (NP41534) 1979 International Harvester Corporation 2400 gallon fuel tanker. Secondly, by not doing so, you ran this vehicle

over median strip dividing US Route 40 and Joppa Farm Road, causing this vehicle to overturn. This vehicle was loaded with approximately 2400 gallons of diesel fuel and had a gasoline fuel tank which both started to leak, causing a hazardous spill and a potential disaster. Upon arrival of the state police, you were administered a portable breathalyzer test and the results were .05, which shows you were drinking recently. By doing so, this exhibited a total disregard for the safety of yourself, your passenger, and the public. Furthermore, you caused extensive damage to the fuel tanker by totaling it. Also, losing approximately 2400 gallons of fuel which had to be pumped out of the tanker and off of the roadway by the hazardous waste team. This incident tied up rush hour traffic for approximately five hours. Finally, you were issued three citations from the Maryland state police.

The hearing took place on October 16, 1989, and later reconvened on November 1, 1989. On November 16, 1989, the Carrier notified the Claimant that he had been found guilty of all charges, excepting that portion noted as Section 22 Sub-Section 101, paragraph A, a, b, and c, and was being assessed discipline of dismissal in all capacities effective that date.

On November 29, 1989, the Claimant appealed his discipline and the Organization filed a claim, on the Claimant's behalf, on December 18, 1989. The Organization contends that the Carrier failed to comply with the time limits of holding a hearing stipulated in Rule 71; the Carrier failed to present any probative evidence to prove the Claimant was under the influence of alcohol or in violation of its rules concerning such; the Carrier failed to present any probative evidence to prove negligence or responsibility in connection with the accident.

The Carrier denied the appeal on the grounds that the Claimant was the driver of the vehicle involved in the accident

on the date in question, was found to have alcohol in his system, and was therefore responsible for the incident. The parties being unable to resolve the issues, this matter came before this Board.

This Board had reviewed the procedural argument raised by the Organization and we find it to be without merit. The record reveals that the Claimant's supervisor did not learn of the alcohol charges against the Claimant until September 26, 1989 when he received the statement of Trooper Jackson. Consequently, by scheduling the hearing within 30 days of that date, the Carrier complied with the requirements of Rule 71.

With respect to the merits, 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 violation of several Carrier Rules, including Rule G. Rule G prohibits employees from possessing, using, or being under the influence of alcoholic beverages while on duty. The record reveals that after the accident, the Claimant was administered a preliminary breath test at the scene and the result showed that he had a .05 reading demonstrating some alcohol in his system. Moreover, one of the troopers at the scene indicated that he smelled alcohol on the breath of the Claimant. Finally, the Claimant informed the trooper that he had drunk a beer at nine o'clock in the morning on the day of the accident which would have been when he was on duty. Based upon that evidence and the admission, there is no question that there

was a proper guilty finding with respect to the Rule G and Rule 4002 violations.

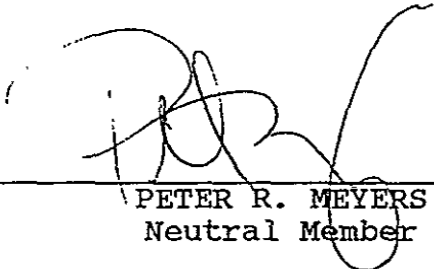
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary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

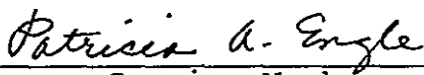
The Organization contends that the Claimant should have been afforded a Rule G waiver and allowed to become eligible for the Company's Employee Assistance Program. However, the record reveals that the employee had a previous positive test for drugs in a Company physical and thereby made himself ineligible for a Rule G waiver.

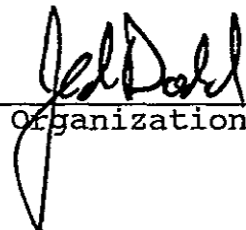
This Board has held on numerous occasions in the past that if an employee uses alcohol while on duty or comes to work under the influence of alcohol, he risks having his employment terminated. In this case, where the employee was operating a vehicle carrying hundreds of gallons of fuel, his action is that more serious. This Board cannot find that the Carrier was unreasonable, arbitrary or capricious when it decided to terminate the Claimant's employment. Therefore, the claim will be denied.

AWARD

Claim denied.

  
\_\_\_\_\_  
PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Patricia A. Engle  
Carrier Member

  
\_\_\_\_\_  
Ted Dahl  
Organization Member

Date: 8-8-91