

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 14
Docket No. NEC-BMWE-SD-1260D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On December 6, 1984, Claimant W.T. Bartley, Jr., was notified by Carrier to appear at a hearing on charges that he violated Carrier Safety Rules and Instructions Rule 4256(c),(d),(f),(g), in connection with an incident that resulted in a personal injury to Claimant. After several postponements, the hearing was held on March 26, 1985. As a result of the hearing, Claimant received a five-day suspension.

The Organization contends that Carrier violated Rule 71 when it failed to set an initial hearing date within 30 days of the incident. Claimant's injury occurred on November 27, 1984, and the hearing initially was scheduled for January 8, 1985. The Organization contends that the assessed discipline therefore should be voided and Claimant compensated for all lost time.

The Organization also argues that Carrier failed to prove the charges by a preponderance of evidence. Rule 4256 applies only to employee conduct when lifting materials; in this case, Claimant was not lifting any materials when he was injured. Carrier therefore failed to prove any violation of Rule 4256. The Organization contends that the claim should be sustained.

The Carrier contends that the Organization waived any objection to the date and scheduling of the hearing under Rule 71. Claimant stated for the record that he received proper notice of the hearing; during the hearing, neither Claimant nor the Organization raised any

objection to the scheduling of the hearing. Carrier also contends that the record establishes that Claimant violated Rule 4256. Claimant admitted that he handled a signal switch, which weighs more than 200 pounds, without seeking help. Moreover, Claimant testified that two other employees were present at the time. Carrier argues that the assessed discipline is justified under the circumstances, and is not arbitrary, capricious, or excessive. Carrier contends that the claim should be denied in its entirety.

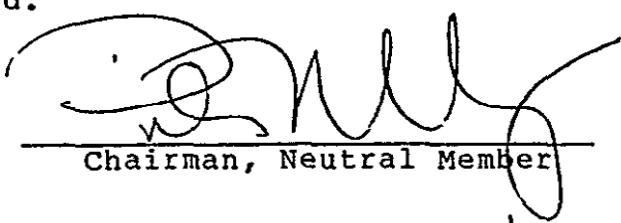
This Board has reviewed all of the testimony and evidence in this case, and we find that the Organization's procedural objection is without merit. Although the original date that the hearing was scheduled, January 8, 1985, is more than 30 days beyond the injury date, November 27, 1984, the Claimant stated to the hearing officer that he had received proper notice to report for the hearing. Moreover, no objection was raised at the hearing regarding the scheduling of the trial date. The record reflects that the Claimant had sufficient time to prepare for the hearing and was not prejudiced in any way by the scheduling of the hearing date.

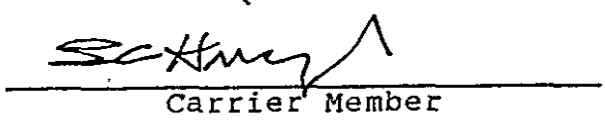
With respect to the merits of the claim, this Board finds that there is not sufficient evidence in the record to support the Carrier's finding that the Claimant was in violation of the Carrier's safety rules and instructions. Although the Claimant did incur an injury on the date in question, that is not sufficient evidence that he was in violation of the safety rules. The burden is on the Carrier to demonstrate that the Claimant took some action which was in violation of the safety rules. No witness was presented who testified in that regard. The Claimant hurt himself by sliding a heavy object across

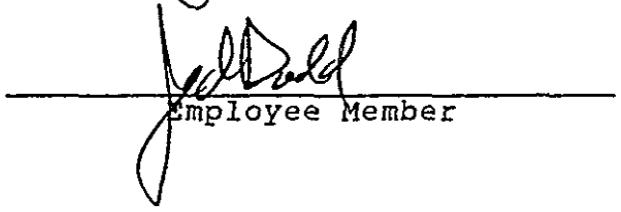
the floor. Accidents do happen; and unless the Carrier can show, by probative evidence, that there was a rule violation, it was inappropriate for the Carrier to impose discipline in this case.

Award:

Claim sustained.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 3-25-87