

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 146

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The ten-day suspension of Rocco Q. Smith for his alleged violation National Railroad Passenger Corporation Rules of Conduct, Rule K was arbitrary, capricious, and without just cause.
2. Claimant Smith's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant Rocco Q. Smith was employed by the Carrier as a maintenance of way repairman foreman at the Penn Coach Yard, Philadelphia, Pennsylvania.

On July 23, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Violation of the National Railroad Passenger Corporation Rules of Conduct, Rule K . . .

Specification: To determine your responsibilities in connection with \$5,000.00 estimated damage to the Philadelphia Equipment Shop overhead door on July 5, 1990, and July 6, 1990, between the hours of 11:00 p.m. and 7:00 a.m.

After one postponement, the hearing took place on August 28, 1990. On September 5, 1990, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of a ten-day suspension. The Carrier also

warned the Claimant that if further misconduct of the same nature occurred in the future, he would be dismissed from the Carrier's service.

Thereafter, the Organization filed a claim on the Claimant's behalf, challenging his suspension. The Carrier denied the claim.

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 damaging an overhead door while performing his duties on July 5, 1990. Claimant exercised poor judgment when he directed a repairman under his supervision to open a door by using a forklift after the door had been taken out of service. The Claimant clearly exercised poor judgment when he took it upon himself to pry open the door. He admitted that he had never done that before in the past.

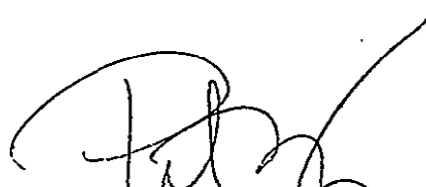
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

The Claimant's prior service record indicates that he received a five-day suspension in 1981 and no other discipline in over 16 years of service. Given the nature of the wrongdoing in

this case, basically in exercising poor judgment, this Board must find that a ten-day suspension for that wrongdoing was simply unreasonable. Certainly a written warning to the Claimant notifying him that he exercised poor judgment would have been sufficient to resolve this problem. The Carrier acted unreasonably when it issued a ten-day suspension. Therefore, the claim will be sustained in part and the ten-day suspension will be reduced to a written warning. Claimant shall be made whole for lost pay for those ten days.

AWARD

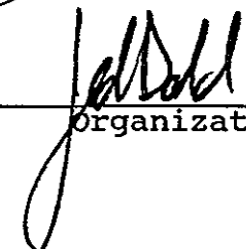
Claim sustained in part. The ten-day suspension is hereby reduced to a written warning. Claimant is to be made whole for the lost pay.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Dated: 9-30-92