

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 155

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (AMTRAK) -
Northeast Corridor

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

1. The dismissal of Trackman E. Graham for alleged violation of Rules A and F(3) was arbitrary, capricious and on the basis of unproven charges (System File Nec-BMWE-SD-3043D).
2. The Claimant shall be returned to the Carrier's service, have his record cleared of the charges leveled against him and paid for all wage loss suffered.

FINDINGS:

The Claimant, Eric Graham, was employed by the Carrier as a trackman.

On February 27, 1992, the Claimant received a notice from the Carrier to appear for a formal investigation into the charges that he violated Rules A and F(3). At that hearing, it was determined that the Claimant was guilty of allegedly authorizing payment of dental claims for someone other than his wife who had apparently posed as his wife. Subsequently, the Claimant was dismissed from service.

The Organization filed the instant claim on behalf of the Claimant arguing that the Claimant did not receive a fair and impartial hearing and that the Carrier did not meet its burden of proof. The Organization contends that the claim should be sustained and the Claimant be reinstated into service and his

record cleared of all charges.

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 the hearing was fair and there is sufficient evidence in the record to support the finding that the Claimant allowed someone other than his wife to receive dental treatment and subsequently apply for dental benefits. Although most of the evidence against the Claimant is in the nature of hearsay, i.e., the statement of the doctor who provided the treatment and the report of his office, the rules of these proceedings are somewhat relaxed and historically we have allowed the receipt of hearsay testimony. Moreover, in addition to that hearsay testimony in this case, we have the very statements of the Claimant and his failure to have his wife, who was in the next room during the hearing, testify to support his case.

The documents that were received by the hearing officer are absolutely convincing that the Claimant attempted to have two different women receive dental benefits under his employment policy from the same dentist. The Claimant really does not deny that but appears simply to act confused and not sure about any of it. However, the handwriting samples and the statements of the dentist make it absolutely plain.

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

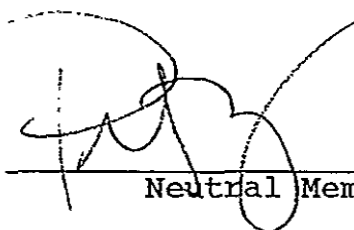
will not set aside a Carrier's imposition unless we find its action to have been unreasonable, arbitrary or capricious.

In the case at hand, the Claimant's actions are so dishonest they amount to a type of theft from the Company. The Claimant and his family were entitled to substantial medical benefits as a result of Claimant's employment. The Carrier has a right to expect that only the Claimant and his family will attempt to obtain those benefits. The Carrier has proven that the Claimant in this case was involved in the efforts of a third party to receive dental benefits under his policy. That type of dishonesty is sufficient to warrant discharge.

This Board cannot find that the Carrier acted unreasonably when it decided to discharge the Claimant after he was properly found guilty of the offenses set forth above. Therefore, the claim will be denied.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 9-27-93