

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 157

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

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

1. The ten-day suspension of M/W Repairman R. Bogart for violation of Rules F and L was arbitrary, capricious and excessive (System File Nec-BMWE-SD-3038D).

FINDINGS:

The Claimant, Robert Bogart, was assessed a ten-day suspension after he was found guilty of insubordination and failing to follow instructions when he responded to his supervisor in a disrespectful manner.

The Organization argues that the ten-day suspension is excessive and further argues that the discipline was based on previous letters that were placed in the Claimant's file. These letters, the Organization contends, are "not permissible in employing principles of progressive discipline". It further disputes that these "letters" were not the result of formal charges and did not go through the disciplinary process, nor did the Organization receive a copy of said letters. Therefore, the Organization believes that the discipline should be either reduced or eliminated altogether.

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 Carrier Rules F and L when he picked up a stool in the tool room and told his supervisor to "stick it up his ass". That action and those words from the Claimant were sufficient to be considered discourteous, unprofessional, and boisterous. In addition, there is sufficient evidence that the Claimant failed to comply with various directives of his supervisor in that same time period. Those actions were sufficient to constitute insubordination.

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.

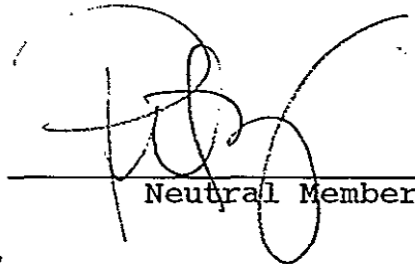
In the case at hand, the Claimant received a ten-day suspension for his wrongdoing. The Organization's main argument is that his only previous discipline are a series of counseling letters and letters of instruction and warning, and that since those actions did not go through the disciplinary process, this discipline was simply too severe.

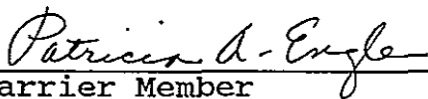
The record is clear that during the Claimant's first year and one-half of employment he received no less than eleven counselings and letters of instructions for a variety of offenses. Although those disciplines may not have been formal in

nature, there is no question that they can be considered when assessing the amount of discipline to be issued to a Claimant. In this case, the Claimant's actions were so severe and threatening that a ten-day suspension should be considered rather lenient, even if those previous warnings and letters were not in his personnel file. This Board cannot find any reason to set aside the Carrier's action in this case. Therefore, the claim will be denied.

AWARD

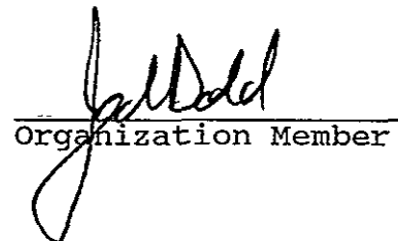
Claim denied.



Neutral Member

Carrier Member

Date: 9-27-93



Organization Member