

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 170

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Trackman R. Prescott for alleged violation of NRPC Rules of Conduct Rule 'F', Parts 1, 2, 3 and sexual, physical and verbal harassment against non-Amtrak employes [sic] from October 12 to November 8, 1993, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-3296D).
2. The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

On November 9, 1993, the Claimant was given an out-of-service notice by a Carrier supervisor when it was reported to the Carrier that the Claimant was allegedly harassing female employees of the Best Western Olympic Inn in which he was staying while assigned to a traveling TLS unit in Groton, Connecticut. Subsequently, a hearing was held to determine whether the Claimant was guilty of the allegations that had been made against him. The Claimant was found guilty of the charge of sexual harassment and misbehavior and dismissed from service on December 28, 1993.

The Organization took exception to the discipline imposed and filed a claim on

behalf of the Claimant contending that he did not receive a fair and impartial hearing. It further argued that the "investigation was improper" because "the Carrier failed to present any credible evidence to support its charges leveled against him".

The Carrier has denied all appeals arguing that "the discipline assessed is commensurate with the seriousness of the offense and the Claimant's past record". Furthermore, it argues that even though the harassed women did not testify themselves, under the circumstances, "it is entirely proper to consider these [written] statements as supporting evidence....the statements give great weight to the credibility of [the manager's] testimony".

The parties not being able to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. First of all, we find that the Claimant received sufficient notice for the hearing to be able to prepare his defense. Moreover, the Organization representative indicated that the Organization was prepared to respond to the charges on the date of the hearing.

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 engaging in sexual harrassing behavior toward female employees at the hotel in which he was staying while working for the Carrier. The record contains sufficient evidence by way of the direct testimony of the hotel manager, who actually witnessed one case of sexual harrassment. The other incidents were reported to him by his staff. The

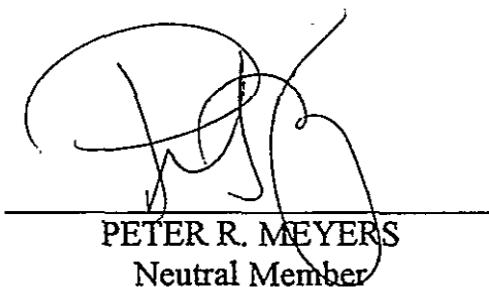
Claimant really does not deny that he had interaction with those employees and, in some cases, does not deny making the harrassing statements to them. He also admits that he touched clothing of one of the female hotel employees.

Once this Board has determined that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the charges, 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.

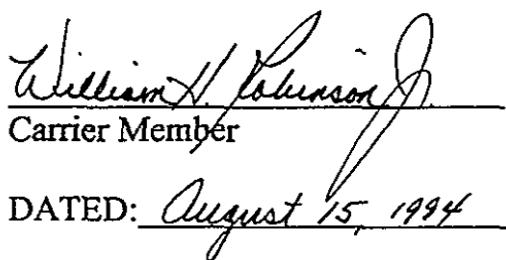
The Claimant in the case at hand has been found guilty of some very serious rule violations. In addition, his record contains a previous 28-day suspension in 1991 for destroying Carrier property. Given the previous disciplinary history of the Claimant, and the seriousness of the wrongdoing of which he was found guilty in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

#### AWARD

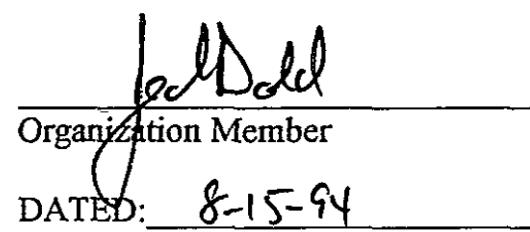
Claim denied.



PETER R. MEYERS  
Neutral Member



William H. Johnson  
Carrier Member  
DATED: August 15, 1994



Jack Dold  
Organization Member  
DATED: 8-15-94