

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 175

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Track Foreman L. Casella for alleged violation of Rules F(1), F(2), and F(3) of Amtrak Rules of Conduct on December 13/14, 1993, was arbitrary, capricious, harsh, unjust, and on the basis of unproven charges (System File NEC-BMWE-SD-3325D).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him, and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant Louis T. Casella was employed by the Carrier as a track foreman at the Carrier's New York Penn Station.

On December 20, 1993, the Carrier notified the Claimant to appear for a formal investigation into the charges that he violated Rules F(1), F(2), and F(3) of Amtrak Rules of Conduct when he harassed, used vulgar language, and threatened Kristina Cassidy, the Block Operator on duty at the Carrier's "R" Tower in Sunnyside Yard, during the period from approximately 10:30 p.m. on Monday, December 13, 1993, to approximately 6:30 a.m. on Tuesday, December 14, 1993.

After two postponements, the hearing took place on February 22, 1994. On March

7, 1994, the Carrier notified the Claimant that he had been found guilty of all charges brought forth against him and was being dismissed from the service of the Carrier effective that date.

The Organization filed an appeal on behalf of the Claimant, which was denied by the Carrier.

The parties not being able to resolve the issue, this matter comes 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 of Conduct F(1), F(2), and F(3). The record is clear that the Claimant harassed, threatened, and intimidated a fellow female employee and that he did not conduct himself in a courteous and professional manner.

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 actions to have been unreasonable, arbitrary, or capricious.

There is no question that the Claimant engaged in very serious wrongdoing which justified a major penalty being imposed upon him. Despite the fact that he has been employed by the Carrier for nearly eighteen years, this Board agrees with the finding of the Hearing Officer that the Carrier had a legitimate basis upon which to discharge the Claimant. Employers can often be held responsible for the outrageous acts of sexual

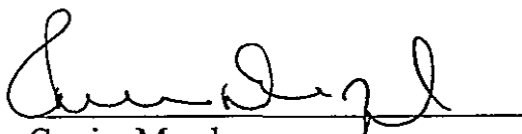
harassment engaged in by their employees. Consequently, this Board must find that the Carrier acted properly when it terminated the Claimant. Therefore the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS  
Neutral Member



Carrier Member

DATED: 12/1/84



Organization Member

DATED: 12-1-84