

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 181

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

1. The dismissal of Trackman M. L. Keys for alleged violation of Safety Rule 4000 and Conduct Rule F-3 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-3424D).
2. The Claimant shall be reinstated to the Carrier's service with all benefits and seniority rights unimpaired, he shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

The Claimant was employed by the Carrier as a trackman assigned to Gang G-062 before he was dismissed.

On Friday, September 9, 1994, the Claimant sustained an injury to his lower back while moving crossties. Believing that it was not serious, he did not report the injury immediately to his supervisor and continued working.

On Monday, September 12, 1994, the Claimant reported the injury to his supervisor because his back had become swollen and painful over the weekend. The Claimant was immediately taken to receive medical attention.

On September 20, 1994, the Claimant was notified to appear for a formal investigation on the charges of failing to immediately report an on-the-job injury and for allegedly furnishing false information as to how he incurred his injury. It was determined at the hearing that the

injury was in fact not reported immediately after it had occurred. Furthermore, the Carrier contended that the testimony of witnesses established that the Claimant was not involved in the work that he had claimed caused the injury. Therefore, the Claimant was found guilty as charged and dismissed from the Carrier's service.

The parties not being able to resolve the issues, this matter is now 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 failing to immediately report his injury and being dishonest by providing false information about the circumstances under which the injury allegedly occurred.

The Claimant testified that he did feel some discomfort in his back on September 9, 1994, and yet admittedly did not report the personal injury until September 12, 1994. Although the Claimant did not believe that the injury was very severe, the rules require that employees immediately report accidents and injuries, even if they are not severe.

The record also contains a great deal of evidence that the Claimant's co-workers did not corroborate his statements as to how the alleged injury occurred. There are a variety of inconsistencies between the testimony of the Claimant and the other employees who were working in the same area on the date in question. Consequently, this Board recognizes how the Carrier determined that it was doubtful that the accident occurred in the way that the Claimant contended, or that any accident occurred at all.

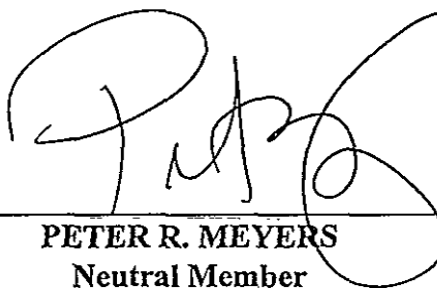
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been

unreasonable, arbitrary, or capricious.

The Claimant's wrongdoing in this case was serious involving honesty and the rule regarding prompt reporting of injuries. Given the short tenure of the Claimant which was only a little over one year, this Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER

DATED: 9-25-95


ORGANIZATION MEMBER
DATED: 9-25-95