

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 186

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

1. The dismissal of Electric Traction Lineman B. Poore for alleged violation of Rule F, Paragraph 3 was arbitrary, capricious, on the basis of unproven charges and excessive (System Docket NEC-BMWE-SD-3464D).
2. The Claimant shall be reinstated to the Carrier's 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 from January 6, 1995 until his return to service.

FINDINGS:

At the time of the incident at issue here, the Claimant was employed by the Carrier as an electric traction lineman at the Durant Yard in North Elizabeth, New Jersey and was assigned to continue bonding work on the Haynes Avenue Bridge. He was under the direction of the Gang Foreman Troncone.

On January 6, 1995, the Carrier was anonymously notified that its employees were observed at a scrap yard unloading copper from a Carrier vehicle. After investigating the allegations, the Carrier discovered that the Claimant and other gang members were involved in the sale of scrap copper which they had removed from the Haynes Avenue Bridge to Motor Plus Metals, Inc. Later that same day, the Claimant was removed from service and charged with "misappropriation of Company property".

During a formal hearing, the Claimant testified that he was reluctant to go along with Foreman Troncone but that Troncone "was freaking out" and started ordering the Claimant to do

it and then he became "mixed up in it". The Carrier relied on the Claimant's own verbal admission and his signed written statement which indicated that he was involved in the selling of the material to the scrap yard. Based upon all of that, the Carrier dismissed the Claimant from service.

The parties being unable to resolve the issue at hand, this matter now 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 misappropriating Carrier property. The Claimant admitted that he participated in the theft and the unauthorized sale of the Amtrak property on January 6, 1995. The Claimant states that he was ordered to participate in the theft and that he was stupid to do it and take the money, but he testified that he did it anyway. At the hearing, the Claimant stated:

Yeah, I told him I said I didn't like it, it wasn't cool because I knew somebody had ripped off the boxcar you know like a couple of weeks before yeah you know I don't know you did it but you know I just didn't want no parts of any kind of you know anything you know and you know I don't know I can say he lead me to it you know I don't know it just happened and it was stupid to know that's how it happened.

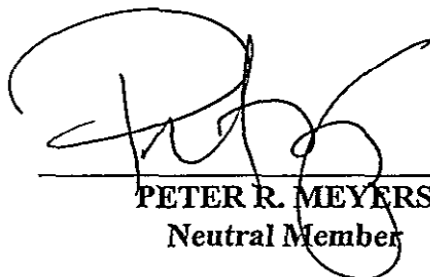
The Claimant also admitted that he accepted his share of the profits from the illegal activity.

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.

In this case, the Claimant was guilty of the very serious wrongdoing of misappropriating Carrier property and receiving money for his misdeed. Employees are very often dismissed for that type of an offense. The Claimant in this case had worked for the Carrier for a short period of time, approximately two and one-half years. Given that short tenure of service and the very serious wrongdoing of which the Claimant was admittedly guilty, 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



CARRIER MEMBER

DATED: 9-25-95



ORGANIZATION MEMBER

DATED: 9-25-95