

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 20

Docket No. NEC-BMWE-SD-1313D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On May 16, 1985, Claimant H. Huber was notified by Carrier to appear at a hearing in connection with the charge that he was observed sitting in a vehicle during his shift on April 30, 1985, in violation of Carrier's Rule of Conduct K, which provides that employees must attend to their duties during work hours. The hearing was held as scheduled on June 6, 1985; as a result of the hearing, Claimant received a five-day suspension.

The Organization contends that Carrier violated Rule 74 when its Assistant Chief Engineer failed to respond to Claimant's appeal within the time limit specified in Rule 74. The Organization points out that the Assistant Chief Engineer responded with reference to a charge different from the one at issue. The Organization therefore argues that Carrier's case is fatally flawed, and the discipline is void.

The Organization additionally contends that Carrier failed to meet its burden of proof. The specific basis for the charge was that Claimant allegedly was sitting in a vehicle at 4:30 a.m. during his midnight-to-8:00 a.m. shift; Carrier translated this to a charge of failure to perform duties. The Organization asserts that Claimant had a contractual right to be in the vehicle at the time; Claimant's presence in the vehicle is consistent with his contractual right to take a twenty-minute lunch break between the fourth and sixth hours

of his shift. Claimant testified that his gang had just completed one of their assigned tasks and, on his instruction, they were taking their lunch break; the testimony of Carrier's general foreman corroborated Claimant's statement. The Organization therefore argues that Claimant was not in violation of Rule K at 4:30 a.m. on the cited date; the claim should be sustained.

The Carrier contends that the record shows Claimant violated Rule K on the date in question. Carrier's witnesses testified that Claimant and his gang were all in Carrier's bus at 4:30 a.m. that day; some employees were lying down, and their tools were packed onto the bus. Carrier asserts that the lunch period is provided for employees to eat, not lie down or pack tools. Moreover, the actions of Claimant and his gang were not consistent with that of employees on a lunch break.

Carrier additionally argues that its Assistant Chief Engineer cited a different charge because of a clerical error. Carrier points out that the rest of the response relates to this case. Carrier also contends that the assessed discipline was not arbitrary, capricious, or excessive; the claim should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in this case, and we find that the procedural claims made by the Organization are without merit.

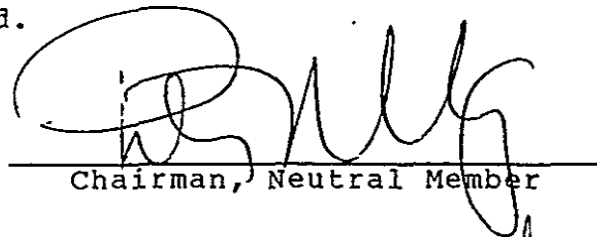
With respect to the substantive matter, this Board finds that the Carrier did not meet its burden of proof that the Claimant was in violation of Rule K. The only testimony relating to any alleged wrongdoing of the Claimant concerned the period of time around 4:30 a.m., when the supervisor found the Claimant and other employees sitting on a bus. The supervisor stated that when he questioned the Claimant concerning

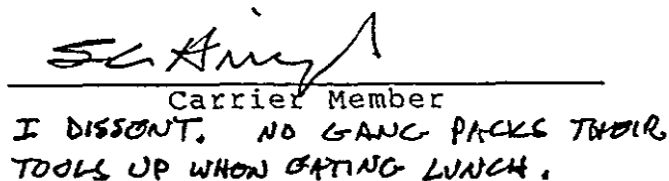
his behavior, the Claimant stated that they were taking a break because it was lunchtime. The gang that the Claimant was with began work at midnight, and they were entitled to a 20-minute lunch break at some point within their eight hours of work. Although this Board must state that it is somewhat unusual to have all of the tools packed up and on the bus during a lunch period, there is really no proof that the Claimant was not going to continue on with his work after the 20-minute lunch period was over. Once he was ordered by the supervisor to return to work, the Claimant and his men began working. The record is clear that the Claimant performed work before and after 4:30 that morning.

Rule K requires that employees must attend to their duties during the hours prescribed. However, the practice at this Carrier is that employees are also entitled to a lunch period. In cases of this kind, the Carrier bears the burden of proof to show, by probative evidence, that the Claimant was in violation of the Rule K. The Carrier has not met its burden, and therefore this claim must be sustained.

Award:

Claim sustained.


Chairman, Neutral Member


Carrier Member
I DISSENT. NO GANG PACKS THEIR
TOOLS UP WHEN EATING LUNCH.


Employee Member

Date: 3-25-87