

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 228

STATEMENT OF CLAIM:

Appeal of the thirty days' suspension and re-qualification on NORAC Rules and Physical Characteristics before being permitted to operate track equipment, assessed Claimant D. Keys, as a result of an investigation conducted on October 18, 2002.

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Mid-Atlantic Division EWE Operator, headquartered in Perryville, Maryland.

By letter dated October 3, 2002, the Claimant was notified to appear for a formal investigation and hearing on multiple charges relating to Claimant's alleged failure, while operating Burro Crane A58813 on September 22, 2002, to stop at the northbound home signal at Prince Interlocking, whereby the track car Claimant was driving continued north through Switch #12, which was not properly aligned for this movement, resulting in a derailment of two carts containing switches and rails, severe damage to #32 Switch Machines, and the fouling of adjacent Track #3. The investigation was conducted, as scheduled, on October 18, 2002. In his October 30, 2002, Decision, the Hearing Officer dropped the charges alleging that Claimant had violated NORAC Operating Rules

133(d), 801, 813 and 815. By letter dated October 30, 2002, the Claimant was notified that as a result of the investigation, he had been found guilty of charges that he had violated Carrier's Standards of Excellence governing Safety and Attending to Duties; NORAC Operating Rules S, B 134(b), 241, 800, 802, 807, 812, 996 and 997; and Carrier's Maintenance of Way Safety Rules and Instructions Rule 4204; and that he was assessed a thirty-day disciplinary suspension and was required to re-qualify on NORAC Rules and Physical Characteristics before being permitted to operate track equipment.. The Organization filed a claim on the Claimant's behalf, challenging the assessed discipline. The Carrier denied the claim.

The Carrier initially contends that contrary to the Organization's assertion that the discipline was harsh and excessive and that Claimant should not be held responsible for a mechanical failure of the Burro Crane's brakes, the record shows that there was no evidence of brake failure on the Burro Crane. Moreover, the Claimant acknowledged that he neither found nor reported any problem with Burro Crane's brakes upon his inspection. Moreover, if the Claimant was unaware of his whereabouts, or of the location of the home signal, then under the applicable rules, it was incumbent upon the Claimant to stop his movement and seek instruction as to how to proceed. The Carrier maintains that the Claimant did not do this, resulting in his passing the signal, derailing the equipment, and damaging the switch.

The Carrier argues that the record demonstrates that Claimant is guilty as charged. Claimant's violation of critical safety and operating rules cannot be taken lightly, especially in light of that fact that these rules are most important to the safety of the

Carrier's employees, customers, and the public; these rules are key to preventing serious collisions and train accidents. The Carrier emphasizes its right and responsibility to establish and enforce rules for the safe conduct of its operations. Violation of these rules places Carrier at risk and jeopardizes its employees. The Carrier asserts that it must impose discipline on employees who violate these rules. The Carrier argues that it must make clear, through disciplinary action, that safety should be of the utmost concern. The Carrier asserts that the thirty-day suspension at issue cannot be viewed as excessive, especially in light of the tragedy that could have resulted.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization contends that the Carrier has failed to meet its burden of proof in this case. The Organization argues that there is no proof that Claimant violated any Carrier rules. The Organization emphasizes that the fact that the ancient Burro Crane operated by the Claimant historically has intermittent brake failure does not constitute proof that the Claimant violated any Carrier rules. The Organization points out that the Claimant has an impeccable work record and reputation for honesty and ability as an operator.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came 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 a number of Carrier safety rules while operating the Burro Crane on September 22, 2002. There is no evidence that it was mechanical or brake failure that caused the accident and there is sufficient evidence that it was the Claimant's failure to follow Carrier rules that was the proximate cause of the incident.

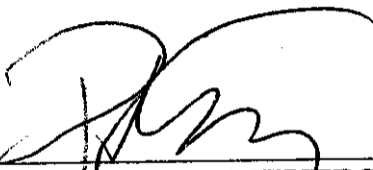
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

Given the seriousness of the offense in this case, this Board cannot find that the thirty-day suspension and the requirement of re-qualification issued to the Claimant was unreasonable, arbitrary, or capricious. This Board recognizes the lengthy service of the Claimant, but that seniority was already taken into consideration by the Carrier when it issued him the thirty-day suspension and required him to re-qualify.

For all of the above reasons, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 3/14/05



CARRIER MEMBER

DATED: 3/3/05