

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Case No. 246

STATEMENT OF CLAIM:

Appeal of thirty-day suspension issued to Claimant M. Davis on August 5, 2004 (System Docket No. NEC-BMWE-SD-4436D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as an Electric Traction Lineman, headquartered in Baltimore, Maryland.

By letter dated April 20, 2004, the Claimant was notified to appear for a formal investigation and hearing to develop the facts and place responsibility, if any, in connection with the Claimant's alleged failure to follow instructions and his alleged improper and unsafe rigging of a caisson that was to be unloaded by a boom truck, as a result of which the caisson fell and struck a private vehicle, causing severe damage to that vehicle. After a postponement, the investigation was conducted on June 2 and July 22, 2004. By letter dated August 5, 2004, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and he was being assessed a thirty-day disciplinary suspension. The Organization filed a claim challenging the Carrier's decision, and the Carrier denied the claim.

The Carrier initially contends that it is unrefuted in the record that while the

Claimant was rigging the caisson to be lifted off the truck on the date at issue, three employees advised the Claimant that they believed that the rigging was wrong and should be done differently. The Carrier points out that the Claimant readily admitted his error, and he attributed his decision to ignore the others' advice and proceed with the ill-fated rigging to the fact that it was "pouring down rain" and he "just wanted to get the caisson off the truck."

The Carrier maintains that the Claimant's admitted failure to properly and safely rig the caisson was contrary to the rules and to the advice of other employees. The Claimant's actions resulted in substantial damage to private property and could have resulted in serious injury to employees. The Carrier emphasizes that the Claimant was aware of the proper manner in which to lift the caisson, he had properly and safely rigged caissons for lifting on several occasions in the past, and the proper equipment was available to the Claimant on the date in question. The Carrier insists that the Claimant's decision not to take the time to perform the function in a safe and efficient manner was at his own peril.

The Carrier maintains that the Organization's arguments are merely an attempt to mitigate the Claimant's guilt. The Carrier contends that the overwhelming testimony demonstrates that the Claimant failed to properly attend to his duties in connection with the incident at issue, in violation of Amtrak's Standards of Excellence. The Carrier argues that violation of these rules puts the Carrier at risk and jeopardizes the safety of its employees. The Carrier therefore asserts that it is necessary for the Carrier to make it clear, through disciplinary action, that safety and care for property are of utmost concern.

The Carrier then asserts that there is no merit to the Organization's argument that the Carrier is at fault in this matter for failing to "post instructions or directions" in order to avoid future incidents of this nature. The Carrier insists that the Claimant was provided the proper tools, equipment, and instructions to safely remove the caisson from the trailers, as he had done on numerous occasions in the past. The Claimant's choice not to follow those instructions and use that equipment was not the result of some failure on the part of the Carrier. The Carrier additionally argues that the fact that the caisson was manufactured by Baltimore Pipe, and not Chesapeake Steel, was not a contributing factor in this incident. The Carrier insists that the caissons from these two manufacturers are identical, except for the thin tubular bracing tack-welded inside the caisson from Baltimore Pipe. The Carrier maintains that had the Claimant taken the time to inspect the supports, as he should have, the Claimant would have come to the obvious conclusion that the supports were tack-welded and never should be used to support the weight of the caisson.

The Carrier insists that its determination as to the level of discipline to be assessed was based upon a good-faith consideration of all of the facts and circumstances. The offenses at issue are of the type that clearly may result in injuries, and the discipline assessed was not excessive. The Carrier argues that the discipline imposed is the most effective way to accomplish the legitimate objective of impressing upon the Claimant the critical importance of performing his duties in a safe and efficient manner in accordance with established rules and regulations.

The Carrier argues that there is no reason to amend the discipline at issue. The

record supports the finding of guilty, and there are no mitigating circumstances that require a reduction or removal of the discipline imposed.

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

The Organization initially contends that there is no support for the assertion that the Claimant should have been able to determine the type of weld if he had inspected the weld. The Organization maintains that the Claimant is not a welder, and he could not be expected to know the difference between a tack weld and a structural weld. The Organization insists that the Claimant was unaware that the tubular bracing was only tack-welded, and there were no warnings on the caissons or accompanying paperwork not to rig or lift by the bracing.

The Organization emphasizes that there were no instructions or information ever posted concerning the rigging of caissons. The Organization asserts that the Claimant relied on his past experience rigging caissons manufactured by Chesapeake Steel. As the Claimant testified, he previously performed rigging operations of unloading caissons by using the "center pick" method, lifting the caisson by the center bracing without incident.

The Organization then points out that the employees who took exception to the method that the Claimant used to rig the caisson did not have any experience with rigging and unloading caissons from flatbed trailers. The Organization asserts that these employees simply had a different opinion as to how to rig the caisson; they did not state that the Claimant had rigged the caisson in an incorrect manner. The Organization emphasizes that Rule 4288 directs employees to "center pick" the load so the lift will be

vertical, to prevent dragging, swigging, or catching other objects. The Organization insists that this was the exact method employed by the Claimant, and no violation therefore occurred. The Organization asserts that the Claimant employed the rigging method that he had learned "on the job" and repeatedly used without incident. Moreover, the Claimant used the nylon sling then available to him; the Organization points out that the double sling referred to by the Carrier was locked in the Job Conex box, and the Claimant did not have the key.

The Organization maintains that the rigging method used by the Claimant did not violate the Carrier's rules or Standards of Excellence. There is no evidence that the Gang Foreman ever instructed or ordered the Claimant to stop unloading the caisson and use a different rigging method. The Organization further asserts that the record shows that the Claimant checked out the bracing and found that the bracing was welded. The Claimant's decision that the bracing would hold when the caisson was lifted was based on the Claimant's experience with Chesapeake Steel caissons, which include structural-welded bracing, as well as the fact that there was no warning not to lift by the bracing.

The Organization further argues that the Carrier must post an "employee advisory" or "safety alert" to prevent a recurrence of this type of incident.

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 failing to attend to his duty and improperly attaching a caisson and violating other safety rules on April 2, 2004, while working as an ET Lineman. The record reveals that the Claimant was advised that he was doing it wrong and he persisted in violating the Carrier's safety rules in the way in which he was operating. The Claimant acknowledged that he knew what he should have done and that he had performed it wrong.

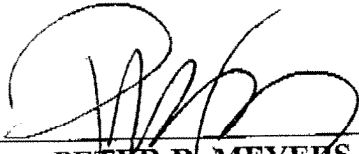
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case has served the Carrier for over twenty-five years. Given that lengthy seniority and some of the other facts of this case, this Board finds that the Carrier acted unreasonably, arbitrarily, and capriciously when it issued the Claimant the thirty-day suspension. Therefore, we find that the suspension shall be reduced to a written Letter of Warning and the Claimant shall be made whole for the lost income resulting from the thirty-day suspension.

AWARD:

The claim is sustained in part and denied in part. There was no just cause for the issuance of the thirty-day suspension of the Claimant. The suspension shall be reduced to a written warning and the suspension shall be removed from the Claimant's record. The Claimant shall be made whole for the lost wages and benefits resulting from the

suspension.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
DATED: 3/3/06


CARRIER MEMBER
DATED: 3/3/06

As the employee's years of service included several disciplinary entries, I dissent to the majority opinion that the discipline was inappropriate.