

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 28

Docket No. NEC-BMWE-SD-1335D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated July 3, 1985, Claimant D.J. Waldron was notified to attend a hearing on the following charges:

Violation of Rule "I" of Amtrak's Rules of Conduct, that part which reads, "Employees will not be retained in the service who are insubordinate . . . or quarrelsome . . ."; and violation of Rule "J" of Amtrak's Rules of Conduct, that part which reads, "Courteous conduct is required of all employees in their dealing with . . . each other."

Specification: In that at approximately 10:15 p.m. on Tuesday, June 25, 1985 in the Philadelphia Subdivision Track Office you took a box of hearing protection from the desk of General Foreman H.E. Thomas and when directed by General Foreman H.E. Thomas to return the hearing protection, you became argumentative and refused to comply with his directive.

The hearing was held on July 9, 1985. As a result of the hearing, Claimant was assessed a thirty-day suspension. The Organization then filed a claim on Claimant's behalf, challenging his suspension.

The Organization contends that Rule 69 of the agreement provides that an out-of-service note is prepared by the employee's department head; Claimant's department head is the Division Engineer. The Organization points out that Claimant's out-of-service note was prepared by a track supervisor. The Organization therefore argues that Carrier improperly suspended Claimant from service with a defective out-of-service note. The Organization also asserts that the hearing officer's actions prevented Claimant from receiving a fair and impartial hearing. The Organization argues that these procedural errors fatally flaw the Carrier's case and require

>Claimant's exoneration.

The Organization goes on to contend that the argument was caused by the actions of General Foreman Thomas. Thomas was the physical aggressor and caused Claimant to sustain an injury. The Organization asserts that Claimant legitimately requested the use of ear protectors and did not act in an insubordinate manner. Thomas' physical assault was the actual rule violation that occurred during this incident. The Organization therefore contends that the claim should be sustained.

The Carrier argues that there is no showing that any of Carrier's actions denied Claimant his due process rights or violated any agreement rules. Moreover, the hearing officer acted only so as to ensure an orderly hearing; the hearing officer fulfilled his duty, and his actions were not improper.

Carrier also contends that there is substantial evidence in the record to support its finding that Claimant is guilty as charged. Claimant's argumentative conduct and refusal to comply with the general foreman's repeated instruction constitutes unacceptable conduct. The assessed discipline is commensurate with the serious nature of the violation; the discipline is not arbitrary, capricious, or excessive. Carrier therefore contends that the claim should be denied in its entirety.

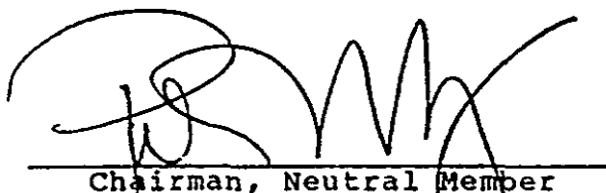
This Board has reviewed the evidence and testimony in this case, and we find that there is no merit to the procedural contentions raised by the Organization. There are numerous Public Law Board awards which have held that it is not prejudicial or improper for the Carrier to have a supervisor other than a division engineer prepare the out-of-service note. Moreover, this Board finds nothing improper

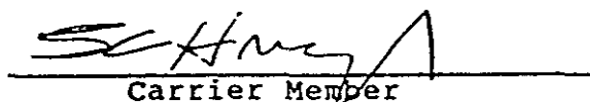
about the hearing officer's actions during the hearing.

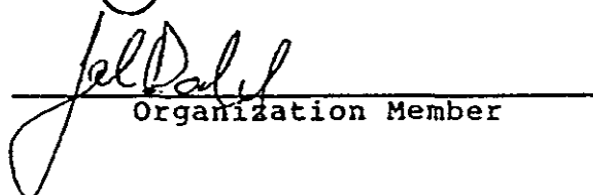
With respect to the merits, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the rule violations with which he was charged. Once this Board has determined that the guilty finding was proper, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless the action taken by the carrier was unreasonable, arbitrary, or capricious. We find that the Carrier's action in suspending the Claimant for thirty days in this case was appropriate considering the Claimant's past record and the nature of the offense.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Organization Member

Date: 8-7-87