

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 8

Docket No. NEC-BMWE-SD-1249D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Amtrak

FINDINGS:

On February 11, 1985, Claimant William J. McGrath was notified that a hearing would be held into the charges that on February 11, 1985, he was insubordinate toward the shop superintendent. Claimant was charged with a violation of Amtrak General Rule of Conduct I, which states, in part:

Employees will not be retained in the service who are insubordinate, dishonest, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.

Subsequent to the hearing, which, after several postponements, was held on March 20, 1985, Claimant was found guilty and assessed a four-day suspension. The Organization contends that the evidence of insubordination consists solely of uncorroborated testimony of the shop steward which was contradicted by three other witnesses. The Organization argues that the testimony of the three witnesses confirmed that it was the shop superintendent who was abusive toward the Claimant. The Organization argues that the claim should be sustained.

The Carrier contends that the shop superintendent instructed the Claimant on how to perform his job and that the Claimant then became irrational and abusive toward the superintendent and directed an obscene remark toward him while also advising the superintendent to


perform the work himself. The Carrier argues that there was no excuse for the Claimant's action, the discipline was appropriate, and the claim should be denied.

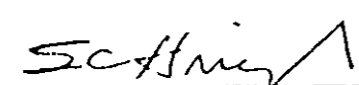
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. Although there are some credibility questions, it is fundamental that this Board does not have the authority to determine questions of credibility and leaves those to the hearing officer. The hearing officer in this case chose to believe the superintendent; and, therefore, we are unable to set that determination aside.

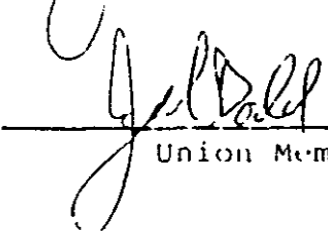
Once this Board has determined that there is sufficient evidence in the record to support the finding of guilty, we next turn our attention to the type of discipline imposed. The Claimant received four days off for the wrongful behavior. We do not find that to be excessive, unreasonable, or arbitrary, given the nature of the offense. Therefore, the claim is denied.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Union Member

Date: 12-30-86