

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 92
Docket No. NEC-BMWE-SD-2249D

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

FINDINGS:

Claimant W.E. Breneman is employed as a trackman by Carrier in Philadelphia, Pennsylvania. On May 27, 1988, Claimant was directed to attend a formal investigation in connection with the following charge:

To determine your responsibility, if any, in connection with you sustaining a personal injury at approximately 11:00 a.m. on May 18, 1988 while acting as a gang watchman in the vicinity of Strafford Station. Rule which may be applicable is Amtrak Rules of Conduct Rule "B," that part which reads, "Safety is of first importance in the operation of the railroad and therefore is the most important aspect of an employee's duties. Employees must understand and comply with safety regulations and practices pertinent to their class or craft of employment. In all circumstances, employees should take the safest course of action."

The hearing took place on July 12, 1988, and as a result, Claimant was assessed a ten-day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging his suspension.

This Board has reviewed the record in this case, and we find that there is no merit to the procedural arguments raised by the Organization. The Claimant and his representative were present at the hearing and were permitted to question witnesses and present evidence and were afforded a sufficient opportunity to defend against the charges.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case; and we find that there is sufficient evidence to support the finding that the Claimant was guilty of acting in an unsafe manner when he elected not to use the wooden platform to cross the tracks in the heavy rain. Claimant was

aware that walking on the ballast involves greater risk of injury.

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 the action taken by the Carrier to have been unreasonable, arbitrary, or capricious.

The record in this case indicates that the Claimant was merely attempting to get out of a heavy downpour of rain when the injury occurred. Some of the Carrier witnesses testified that if the Claimant got injured, then he must have broken a rule. This Board finds that that conclusion is without basis. Moreover, the Claimant's service record reveals only one previous discipline in 1981 for a violation of a safety rule. Although the Claimant has incurred numerous on-the-job injuries while employed by the Carrier, that is no reason for the Claimant to receive such a serious penalty as a ten-day suspension in this case.

Given the record of the Claimant, and the extent of the wrongdoing for which he was found guilty, this Board finds that the Carrier acted unreasonably when it issued the Claimant a ten-day suspension. This Board hereby reduces the ten-day suspension to a written warning and orders that the Claimant be made whole for all lost pay and that the ten-day suspension be removed from his record.

Award:

Claim sustained in part. The ten-day suspension is hereby reduced to a written warning, and the Claimant is to be made whole for all lost pay and other benefits resulting from the wrongful

suspension.

Peter R. Meyers
 PETER R. MEYERS
 Neutral Member

Patricia A. Engle
 Carrier Member

John D. D.
 Organization Member

Date: 6-14-89