

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 93
Docket No. NEC-BMWE-SD-2255D

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

FINDINGS:

Claimant J. Ferriola was employed as a track foreman by Carrier in Baltimore, Maryland. On July 21, 1988, Claimant was directed to attend a formal investigation in connection with the following charge:

Violation of NRPC Operating Rules and Instructions, Rule 910, which reads in part: " . . . Track foremen are responsible for safety instruction and safe performance of all employees under their jurisdiction. They are responsible for the care and proper use of tools, material and equipment . . ."

Specification: In that on Tuesday, July 19, 1988 approximately between the time of 3:30 a.m. and 4:12 a.m. in the vicinity of MP 101 and MP 103, you failed to ensure the safety of employees in your charge when you did not properly instruct the compactor operator, Mr. M. Franklin, as to his clearing point and you also did not take protective action to stop WHBA 11 when you realized Mr. Franklin had passed the clearing point, the result of which was the collision between WHBA 11 and Compactor A12310 in the vicinity of MP 106.8. This resulted in personal injury to Mr. Franklin and extensive damage to the compactor.

The hearing took place on July 27, 1988, and as a result, Claimant was assessed a suspension of forty-five days and was permanently disqualified as a track foreman. The Organization thereafter filed a claim on Claimant's behalf, challenging the assessed discipline.

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 Safety Rule 910, which requires track foremen to be responsible for safety instruction and safe performance of all employees under their jurisdiction. There is no question that the Claimant made some serious errors on July 19, 1988, which led to the collision and significant

damage to Carrier property. The Claimant failed to tell the operator of the proper tie up point.

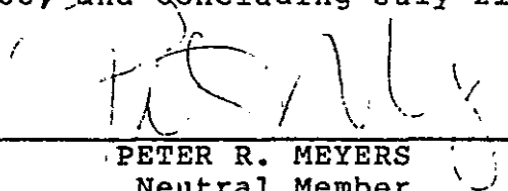
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the action taken by the Carrier to have been unreasonable,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

In the case at hand, the Claimant was guilty of violating several safety rules. The Claimant received a 45-day suspension, and he was permanently disqualified as a foreman. This Board has reviewed the Claimant's past disciplinary record, and we find that the 45-day suspension was appropriate and that the permanent disqualification as foreman was much too severe given the nature of the incident and the previous disciplinary record of the Claimant. This Board hereby modifies the discipline to a one-year disqualification of the Claimant from his foreman position, effective on the date of the investigation, July 21, 1988, through July 21, 1989. The Claimant should be instructed that if any further safety violations occur, his rights as a foreman may be lost forever.

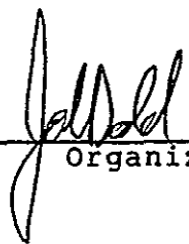
Award:

Claim sustained in part. The 45-day suspension of the Claimant is affirmed. However, the permanent disqualification as foreman shall be reduced to a disqualification as foreman for a period of one year

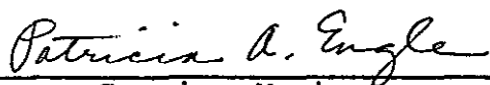
effective July 21, 1988, and concluding July 21, 1989.



PETER R. MEYERS
Neutral Member



Organization Member



Carrier Member

Date: 6-14-89