

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 97

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO :  
DISPUTE: NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) -  
NORTHEAST CORRIDOR

STATEMENT OF CLAIM: "Claim of System Committe of the Brotherhood  
that:

1. The dismissal of Trackman M. Green for alleged violation of Rules 'K', 'M', and 'F-3' of Amtrak's Rules of Conduct was harsh, arbitrary, and inconsistent with prior Carrier discipline and in violation of the Agreement (System File NEC-BMWE-SD-2377D).
2. The Claimant shall be exonerated of the charges leveled against him and he shall be reinstated in the Carrier's service with seniority and all other rights unimpaired.

FINDINGS:

Claimant M. Green was employed as a trackman by Carrier. On September 16, 1988, Claimant was instructed to appear for an investigation in connection with the following charge:

- "1) In that you allegedly submitted fraudulent material requisition Form 2070's on 8/17, 8/27, 8/29, 9/9 at Penn Coach Yard Material Storehouse, in Philadelphia;
- 2) In that you allegedly acquired two unreserved coach tickets #3168176260 NYP/PHL and #3658057833 PHL/NYA with full intentions of distributing them to a non-Amtrak employee.
- 3) In that you allegedly utilized material forms and Rail Travel privilege card in a deceptive manner."

The hearing was held on February 13, 1989 and as a result Claimant was dismissed. The Organization thereafter filed a claim on Claimant's behalf challenging his dismissal.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit. The record reveals that after the Claimant was charged with the wrongdoing his hearing was promptly scheduled to be held on September 28, 1988. The Carrier

agreed to postpone the hearing on two occasions at the request of the Organization or the Claimant and it was finally scheduled to begin on January 3, 1989. Because of a sudden death in the family of the trial officer, the hearing was rescheduled for January 24, 1989. Because of the unavailability of some of the Carrier witnesses, the investigation was recessed and continued on February 13, 1989.

Given the facts of this case, this Board cannot find that the Claimant's rights were prejudiced when the hearing was continued from January 3, 1989 to February 24, 1989 as a result of the Carrier's request, when the hearing had already been continued from September 28, 1988 until January 3, 1989 at the Organization's or the Claimant's request. This Board finds that the Claimant's rights were not violated because of the delay in the hearing, since most of the delay can be attributed to the Claimant.

With respect to the substantive issues, this Board finds that there is sufficient evidence in the record to support the finding that Claimant was guilty of submitting fraudulent material requisitions and obtaining Company property without authorization. The record reveals that the Claimant admitted his wrongdoing and guilt of the charges at the hearing.

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 Carrier's action to have been unreasonable, arbitrary or capricious.

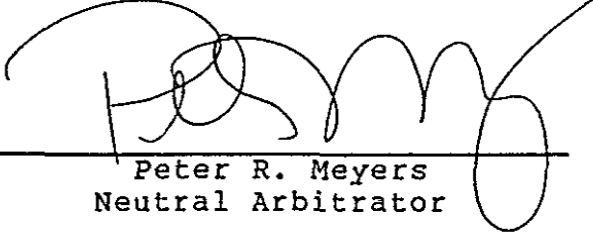
The action of the Claimant in this case amounts to theft. This Board has held on numerous occasions in the past that theft is a

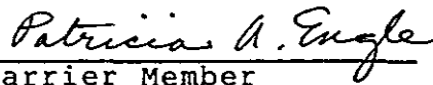
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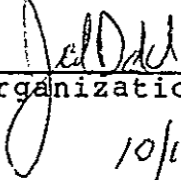
dismissible offense irrespective of the length of service or previous disciplinary record. This Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the claim must be denied.

AWARD

Claim denied.

  
Peter R. Meyers  
Neutral Arbitrator

  
Carrier Member

  
Organization Member  
10/17/89