

Special Board of Adjustment No. 987

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees - N.E. System Federation)	
)	Case No. 3
vs)	
)	
National Railway Passenger)	Award No. 3
Corporation)	

STATEMENT OF CLAIM

1. The dismissal of Claimant William H. Scruggs was excessive, without just and sufficient cause, and wholly arbitrary and capricious, in that Carrier failed to substantiate its charges at the hearing; and
2. Claimant Scruggs' record be expunged of the charges and that Claimant be reinstated in Carrier's service and be compensated for all lost wages, including overtime pay, at the foreman's rate of pay for the time he was out of service.

FINDINGS

On June 12, 1985 the Carrier notified the Claimant to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged violation of Rules of Conduct I and K. The investigation was held on July 10, 1985 with the Claimant in absentia. On July 18, 1985 the Claimant was advised that he had been found guilty as charged and he was dismissed from service.

The Claimant was specifically charged with subjecting the Carrier to criticism and loss of good will when his name appeared in the June 4, 1985 edition of the New London, Connecticut newspaper which is called The Day. On that date the newspaper identified the Claimant as an AMTRAK employee who had received an eight month prison sentence for his involvement in a "scam" with AMTRAK credit cards. With respect to this charge the Rule at bar reads as follows, in pertinent part:

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Rule I

Employees will not be retained in the service...who do not conduct themselves in such a manner that the company will not be subjected to criticism and loss of good will.

The Claimant was also charged with violation of Rule K for having been absent without a proper cause from June 3, 1985 until the day the notice of investigation was sent to him under date of June 12, 1985. This Rule reads, in pertinent part, as follows:

Rule K

Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed.

The record shows that the Claimant was in the Montville Correctional Center when the notice of investigation was sent to him by registered mail by the Carrier. The record also shows that the Claimant refused to sign the appropriate papers as required by the Center in order that he could have received the notice. In a sworn statement which is part of the record a Correctional Center officer stated that the Claimant told him that he "...knew what the letter was..." but yet refused to accept it "...on the advice of his attorney".

The Organization objects to the Carrier having sent the notice of investigation to the Claimant in the first place, and to the subsequent investigation itself, on the grounds that the Carrier knew of the credit card scam which the Claimant had been involved in as early as the fall of 1984 and that the Claimant had already been called to an investigation and disciplined over that matter. Such objection just be dismissed since this case deals with other issues than the Claimant's participation in the scam per se. This case deals with potential damage to the Carrier's reputation because of the public notice of the Claimant's sentencing for participation in the scam and for perjury, and with the Claimant's excessive absenteeism.

On merits there is sufficient evidence of probative value in the record to warrant the reasonable conclusion that the Claimant was guilty of violation of the Rules with which he was charged. The Claimant's past record, which is also before the Board, and which can be reasonably

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used by a Carrier to determine the quantum of discipline, shows that the Claimant had been disciplined on six occasions prior to the case at bar, and had been disqualified on one occasion. Numerous arbitral forums have ruled, in this industry, that past record of an employee can be used to ascertain the appropriate discipline if an employee is found guilty, as accused, on merits (Second Division 5790, 6632; Third Division 21043 inter alia). On the basis of the record before it the Board can find no justification for concluding that the discipline in the instant case which was levied by the Carrier was arbitrary or capricious. The claim cannot be sustained.

AWARD

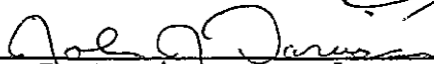
Claim denied.



Edward L. Suntrup, Neutral Member



C. E. Woodcock III, Carrier Member



J. J. Davison, Employee Member

Date: 11/3/87