

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25530
Docket Number MW-25859

James Robert Cox, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The thirty (30) days of suspension imposed upon Bus Driver J. **Holtzman** for alleged violation of "Rule 4007" and "Rule J" was unwarranted and on the basis of unproven charges (System Docket **NEC-BMWE-SD-525D**).

(2) The claimant's record shall be cleared ~~of~~ the charges leveled against him **and** he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Bus Driver **J. Holtzman** was suspended for thirty days for an alleged violation of Rules 4007 and **J** for engaging in on the job horseplay which injured another employee.

Safety Rule 4007 mandates that employee conduct must be free from *scuffling, practical jokes or horseplay while on duty or on company property.. Rule J-reads in pertinent part that . . .**horseplay...interfering with** other employees while on duty is prohibited...*.

The Project Engineer in charge of the Anchoring gang investigated an accident suffered by Ed Badyna that day. Badyna fell off the back of a truck and broke his collar bone during lunch September 27, 1982. **Two** witnesses gave statements stating that there was horseplay, food throwing and wrestling and that Badyna, standing in back of the truck, fell over the rear of the vehicle and another employee fell on top of him.

Holtzman was one of the five **employees** throwing food at each other. One witness stated that, when Badyna fell, **Holtzman** was sitting inside the truck. **Holtzman** said that he was in the passenger seat but another witness stated that **Holtzman** was not in the truck but was wrestling. As she put it, "All of us was sitting inside first, when they got to wrestling - they got out and started running around and flipping each other and carrying on, you **know**, horseplaying **or** whatever, and that's when Al Anderson and Ed Badyna got, were wrestling together. First they all was, then them two got to wrestling and that's how he got hurt.' She also stated that Ed **Badyna's** brother told her and other **employees** that Management should not be informed that his brother had been horseplaying or that the brother would have them fired. **He** explained saying that everyone was to say that Ed had hurt his collar bone lifting a tool cart from the truck.

While **Holtzman** admitted that there had been horseplay and that he and other **employees** threw cupcakes at each other, he asserted that he was sitting in the truck discussing what work he would do next when informed that his brother had gotten hurt. **He** claimed that he had ceased throwing food before the incident occurred and didn't see what had happened.

The evidence is insufficient to establish that Claimant's food throwing contributed directly to the wrestling incident which caused Ed **Badyna's** injury. While a 30 day suspension is excessive, the food fight did, however, occur on Company property and **Holtzman** admitted his participation to that extent. While there **is conflict** as to his wrestling, his active involvement in horseplay that day justifies discipline. The Board finds that Claimant's suspension should be reduced to .15 days.

FINDINGS: The Third Division of the Adjustment **Board**, upon the whole record and all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.

