

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26123

Docket Number MW-26346

Philip Harris, Referee

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

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

(1) The dismissal of Trackman M. Marshall for alleged violation of Rules 'I' and 'J' was arbitrary, capricious and on the basis on unproven charges (System File NEC-BMWE-SD-765D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On October 30, 1983, Claimant attempted to board a Metro-liner at Trenton, New Jersey using his Rail Travel Privilege Card, which was not acceptable as a ticket. He then entered a different car of the train and thereby became involved with the train crew, refused to disembark at Newark, was apprehended by Amtrak Police at Penn Station, New York, was handcuffed and then released, and finally was arrested later that evening for criminal trespass after he was told to remain off the property. Throughout the above sequence and within hearing and view of the riding public, Claimant was vulgar, threatening and boisterous.

The Organization contends that any profanity was not directed at Management personnel but rather was general statements. Also, no passengers had complained about the incidents, and the Claimant was removed from service by a Supervisor unknown to him.

The Board agrees that a reading of the record establishes substantial evidence that a full and fair Hearing was conducted by the Carrier, and that its conclusions were not arbitrary or capricious. Several witnesses supported the charges of wrongdoing by the Claimant, making the separation from service a reasonable action by the Carrier. Furthermore, there was an attempt through progressive discipline to correct his inappropriate behavior, but this did not produce the desired result.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

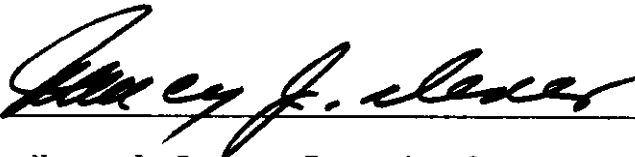
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

