

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38199
Docket No. MW-39521
07-3-06-3-306

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference

PARTIES TO DISPUTE:

(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (removal from service on September 12, 2005 and termination effective immediately on September 30, 2005) imposed upon Mr. D. J. Mullen in connection with charges of alleged violation of AMTRAK ‘Standards of Excellence’ section ‘Attending to Duties’ and Rule 1.9 and Rule 1.29 of the General Code of Operating Rules for Maintenance of Way Employes, while assigned to provide positive on-track protection for contractor personnel working on the Hillsdale Station improvement project on August 31, 2005 and again in connection with charges of alleged violation of AMTRAK ‘Standards of Excellence’ section ‘Attending to Duties’ and Rule 1.6 and Rule 1.29 of the General Code of Operating Rules for Maintenance of Way Employes, while providing positive protection for contractor personnel working on the Hillsdale Station improvement project on September 6, 2005, was arbitrary, capricious, unwarranted and excessive (Carrier’s File BMW-521D NRP).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. J. Mullen shall ‘... now be reinstated to the service of the Carrier to his former position with seniority and all other rights restored unimpaired, compensated for net wage and benefit loss suffered by him since his removal from service and

subsequent dismissal, and that the alleged charges be expunged from his personal record.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the time this dispute arose which resulted in the Claimant's dismissal, the Claimant was a Track Foreman/Flagman. On the relevant dates, operations over the main line track near Hillsdale, California, were restricted due to a construction project. The Claimant was the Foreman in charge, which meant that trains operating through the territory needed the Claimant's permission to proceed. Trains proceeding through the territory were commuter trains.

On August 31, 2005, Train Operators were unable to contact the Claimant to obtain permission to proceed because the Claimant had not reported for duty at his assigned starting time of 7:00 A.M., forcing the Carrier to make alternative arrangements to assign an employee to give the required permissions for movement. As a result, nine trains were delayed. The Carrier was able to contact the Claimant at home after 9:00 A.M. and found that he was still sleeping. The Claimant attributed his oversleeping to a power failure and a diabetic condition.

On September 6, 2005, the Claimant drove his vehicle onto the right-of-way in order to be in position to provide protection. However, the Claimant's vehicle got stuck, resulting in the delay of two trains. The record shows that the Claimant could have positioned himself in another location so that he could provide protection and not jeopardize train movements.

Substantial evidence supports the Carrier's conclusion that the Claimant violated its Rules. The Claimant's oversleeping and operating his vehicle in a fashion to get stuck on the right-of-way - both causing train delays - clearly violated the Claimant's obligation to be attentive to his duties and avoid delays. The Claimant's asserted excuses for the charged misconduct do not change the result.

Dismissal was not arbitrary. The Claimant's misconduct caused commuter train delays. The Claimant has a substantial prior disciplinary record including a ByPass Agreement Waiver for violation of the Carrier's Drug & Alcohol policy, a three day suspension for improperly authorizing equipment on a track, a reprimand for failing to report to duty, a three day suspension for absenteeism, a ten day suspension for absenteeism and a dismissal for sleeping on duty (which was reduced to reinstatement with no backpay in Public Law Board No. 6054, Award 8). Progressive and corrective discipline has not worked for the Claimant. The Claimant has not gotten the message that he has to comply with the Carrier's Rules.

On the basis of the above, the claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of May 2007.