

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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Brotherhood of Maintenance of  
Way Employes

-and-

National Railroad Passenger  
Corporation (Amtrak)

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Case No. 1  
Award No. 1

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second, of the Railway Labor Act and the applicable rules of the National Mediation Board.

The Brotherhood of Maintenance of Way Employes and the National Railroad Passenger Corporation (Amtrak) (hereinafter the Organization and the Carrier respectively) are duly constituted labor organization and carrier representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

On October 8, 1979 a hearing was held in the Carrier's offices in Philadelphia, Pennsylvania at which the below-stated claim was addressed:

STATEMENT OF CLAIM

"(a) The Carrier violated the Rules Agreement effective May 19, 1976, as amended, particularly Rules 68, 69, 71, 74 and 64, when it assessed discipline of dismissal of Machine Operator R. L. Watkins on October 7, 1977.

(b) Claimant Watkins' record be cleared of the charge brought against him on August 31, 1977.

(c) Claimant Watkins be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 64."

Claimant, whose home seniority district was in Baltimore, Maryland had seniority as both a Machine Operator and as a Trackman. The Claimant had returned to his home seniority district after performing service for the Carrier in New England on a Rail Train position. Upon Claimant's return to his home seniority district he attempted, but failed, to exercise his Machine Operator's seniority and exercised seniority instead as a Trackman.

On the date of the incident which gave rise to the Claimant's dismissal, August 31, 1977, the Claimant was assigned as a Trackman on the A-012 District Tie Gang, Baltimore Division. The Claimant was involved in removing rail anchors, when his Foreman directed him to go to the front and relieve one of the Trackmen who was pulling spikes. The Claimant did not relieve any of the employees who were engaged in pulling spikes when he observed that, in his opinion, there were more than enough employees engaged in this task. He started to return to his position when he encountered his Foreman and advised him, the Foreman, that he was not needed for the job of pulling spikes and that he did not intend to perform that job.

The Carrier relieved the Claimant of his assignment and charged the Claimant, for this action, with insubordination.

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A trial was held; the Claimant was found guilty of insubordination and dismissed; and, the Organization properly progressed the case to this Board.

It is the position of the Carrier that the trial record conclusively shows that the Claimant was guilty of the offense with which charged; that the discipline imposed was commensurate with the offense involved; that the Claimant was not harassed; that the Carrier's action in disciplining Claimant was not arbitrary, capricious, or unreasonable; and, that there is no basis for the Board to make any change in the discipline imposed.

It is the position of the Organization that the record demonstrates insidious harassment of the Claimant by the Carrier's foreman. This harassment is apparent, the Organization argues, by the Carrier's failing to assign the Claimant as a Machine Operator and by permitting another trackmen to operate a machine rather than allowing the Claimant to so operate the machine. The Organization states that the ordering of Claimant to join a uniquely large group of trackmen pulling spikes is indicative of the Carrier's harassing tactics. It is the further position of the Organization that the discipline imposed was excessive.

The facts before us in this case are clear and uncontroverted. Both the Carrier and the Organization, in their submissions, quote a relevant paragraph from the trial transcript which we will address here:

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"Q. Mr. Robert Watkins, based on your testimony just spoken, were there any machines in your working area at the time?

A. I was behind the scarifier knocking off rail anchors. The foreman came down and told me to go up there and pull spikes. He got six trackmen up there pulling spikes and he told me to go up and pull spikes. He got one man -- one trackman running the machine and five pulling. If I'm a Machine Operator I felt I should be put on that machine instead of a crowbar."

It was after this observation by the Claimant that he confronted his Foreman and told the Foreman that in his opinion, the Claimant's, that there were enough men up there pulling spikes and that he, the Claimant, was not needed in that function. When the Foreman advised the Claimant that he specifically wanted the Claimant to be included in the crew pulling spikes in order that he, the Foreman, could "get out of the saws way" and then directed the Claimant to go up and start pulling spikes, the Claimant refused.

The credible evidence of record clearly demonstrates that the Claimant advised his Foreman that he wasn't going to perform the job which he was directed to do. The Foreman advised the Claimant that if he was not going to pull spikes he was not going to be paid. In spite of this warning, the Claimant did not change his mind and follow the direct order of his Foreman. There is no question but that the action of the Claimant was insubordinate.

Without reciting the legion of cases which support the principle that an employe must follow his Carrier's direct orders, unless those orders place him in physical danger or are in contravention of

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law, it is sufficient to say that in the case before us the Claimant was required to obey his supervisor's direct orders.

If we were to presume that all of the Claimant's allegations regarding harassment, which were primarily concerned with his feeling that he was being restricted from properly exercising his machine operator's seniority, were true, we would still be led to the conclusion that the Claimant was insubordinate. He the Claimant, had available through his Organization and the Organization's ability to process a grievance for him, a remedy for allegations of harassment and/or the alleged violation of his collective bargaining agreement rights. There was no need for the Grievant to actively disobey a direct order of the Carrier.

In view of the above, we find that the Claimant was guilty as charged and that the discipline imposed by the Carrier was not arbitrary or capricious.

AWARD

Claim denied.

Richard R. Kasher  
Richard R. Kasher,  
Chairman and Neutral Member

William E. LaRue  
William E. LaRue,  
Organization Member  
P.L. Board No. 2406

S. H. Heltzinger  
S. H. Heltzinger,  
Carrier Member  
P.L. Board No. 2406

DATE: 12/17/79

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