

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	
	*	Case No. 10
- and -	*	
	*	Award No. 10
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	

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Public Law Board No. 2406 was established pursuant to 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 March 2, 1981, 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 dismissal of Trackman R. V. Lattanzio for alleged violation of NRPC General Rules of Conduct, Rules I, J, and K, was without just and sufficient cause, the decision being based on charges not supported on the trial transcript.

(b) The dismissal was arbitrary and capricious, and the Claimant was not afforded a fair and impartial trial.

(c) Claimant Lattanzio's record be cleared of the charges brought against him on October 20, 1980.

(d) Claimant Lattanzio be restored to service with seniority and all other rights unimpaired and be compensated for all wage loss suffered.

The Claimant was charged with having physically abused his foreman on October 17, 1980, in the Boston Station track shanty. By letter dated October 20, 1980, the Claimant and his Organization

representatives were notified of the charge against him and a trial was set for October 27, 1980. The trial was eventually held on November 13, 1980, and as a result of said trial, the Carrier found the claimant guilty of violating rules of conduct and the Claimant was subsequently dismissed from service.

A review of the trial transcript and the documentation submitted in this case demonstrates certain conflicts in the facts surrounding the incident which took place on October 17, 1980, in the Boston Station track shanty. The supervisor who was involved in the conflict with the Claimant has testified that he was struck in an unprovoked assault by the Claimant while they were exchanging words concerning the performance of a job function. The Claimant has testified that the supervisor harassed and provoked him and in raising his hand, the Claimant construed the supervisor's action as a threat which resulted in his grabbing the supervisor by the lapels of his jacket and physically forcing him into a chair.

The entire incident in the track shanty could not have consumed more than four minutes from the time that the physical confrontation took place until the individuals were physically separated and restrained. The evidence of record establishes that the Claimant and the supervisor exchanged words, which words were not necessarily heated but which by the testimony of both individuals led to the physical confrontation. The Claimant justified his actions on the basis that he construed the supervisor's words as provocative and sought to restrain the supervisor from attacking him. Witnesses to the confrontation credibly support the supervisor's testimony

that during the physical confrontation the Claimant threatened the supervisor verbally as well as physically. The testimony of these eye witnesses also supports a finding that it was necessary not only to restrain the Claimant but to restrain the supervisor who apparently was prepared to continue participation in the physical confrontation. Witnesses also observed that the Claimant had suffered lacerations to the face during the brief struggle with his supervisor.

The Carrier has argued that there was no provocation for the Claimant's grabbing or pushing the supervisor and that the Claimant is sufficiently knowledgeable regarding the rules of conduct of the Carrier so that he should not have engaged in the altercation. The Carrier further argues that altercations cannot be condoned and that there is no basis for excusing the Claimant's actions on the day in question.

The Organization contends that the charges brought by the Carrier are not supported by the trial record; that the altercation was instigated by Claimant's supervisor; and, that the supervisor participated in the fracas and was not subject to any disciplinary action for his conduct.

A review of the totality of the evidence in this case leads this Board to conclude that the Claimant did in fact apply the first physical force in the altercation of October 17, 1980. Although, the exchange of words between the two participants do not on their face appear to be sufficient provocation to justify the physical confrontation that took place, we are convinced by the totality of the evidence that in view of the poor prior relationship between these two

individuals that such words may have taken on a different meaning in the context of their circumstances. We further find, in reviewing the trial transcript, that the Claimant may have reasonably concluded that he was being provoked or harassed. However, we do not in any way condone the grievant's reaction to his perceived provocation.

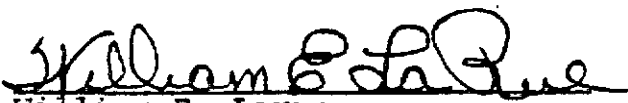
We find that the Carrier acted reasonably and within the context and spirit of its rules of conduct when it charged, tried, and found the Claimant guilty of improper conduct. We further find that the Carrier cannot condone or permit this type of activity on its property or among its employees.

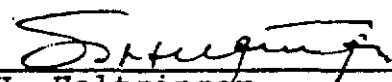
Two factors mitigate the imposition of discharge in this case. The first, referred to above, is the apparently poor personal relationship between the two participants in this incident. This relationship led to the Claimant's perception of provocation and, in our view, led to the improper conduct. The second mitigating factor involves the Claimant's state of agitation, caused by external personal influences, at the time of the incident. Although, this factor standing alone would not justify mitigation of the penalty of dismissal, when it is coupled with the sense of provocation which existed in the circumstances on October 17, 1980, justifies, in our view, reducing the penalty of dismissal to one of suspension.


Although, it is not within the jurisdiction of this Board to direct, in the restoration of an employee, where and how said employee shall perform future service, we believe it is appropriate to comment on that subject in light of the peculiar circumstances in this case.

We would recommend, in light of the apparent irreconcilable personality conflict between the Claimant and his supervisor, that if feasible within the confines of the Carrier's flexibilities in work assignments and if further feasible within the restrictions of the seniority agreements between the parties, that the Claimant be restored to service in a location not subject to the jurisdiction of the involved supervisor.

AWARD: This Board finds that the claim should be denied, in that the Claimant was guilty of the cited rules violations; however, in light of the mitigating circumstances, the penalty of dismissal shall be converted to a penalty of suspension. The Carrier is therefore directed to restore the Claimant to service consistent with its requirements to qualify.

  
William E. Larue,  
Organization Member

  
S. H. Heltzinger,  
Carrier Member

  
Richard R. Kasher,  
Chairman and Neutral Member

Dated: March 10, 1981  
Philadelphia, Pennsylvania