

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 11
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 11
	*	

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

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

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The Carrier violated the effective Rules Agreement dated May 19, 1976 on February 14, 1980 by unfairly and unjustly dismissing Claimant Matthew N. Brown.

Claimant Brown shall be reinstated to Carrier's service, with seniority rights unimpaired and compensated for time lost."

Prior to his dismissal, the Claimant was assigned as a Truck Driver at the Carrier's Baltimore Division. At approximately 11:20 a.m. on January 24, 1980 the Claimant allegedly started a fight and threatened another employee with a rock at the Bush Interlocking. The Claimant was removed from service on January 24, 1980.

By letter dated January 25, 1980, the Claimant was notified to attend a trial on January 31, 1980 to determine his responsibility in connection with an alleged violation of General Rule J, which reads as follows:

"Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, Fighting, horseplay, threatening or interfering with other employees while on duty is prohibited."

The trial was held as scheduled and the Claimant was found guilty of the charge and was permanently dismissed from service.

The facts developed in the record reveal that on January 24, 1980, the Claimant returned to his work location at approximately 11:20 with the lunch order for his gang. A truck, parked by a member of a Communications and Signal (C&S) Gang, was parked on an access road blocking the Claimant's path to the track. A member of the C&S gang noticed that the Claimant's truck was blocked and he approached the C&S truck to move it. According to the Claimant, the C&S employee looked as though he was angered at having to move his truck. No words were exchanged. After the C&S employee moved the truck to the side of the access road, the Claimant pulled up beside him, got out of his truck, removed his jacket, and threw a punch at the C&S employee, who was sitting in his truck. The C&S employee then left the cab of his truck and the two men wrestled. The Claimant picked up a rock and threatened to break open his fellow employee's head. At this point, the foreman of the C&S gang broke up the altercation.


The Claimant did not deny any of the foregoing. Nor did he deny acting without apparent provocation. At both his trial and the trial of the C&S employee, the Claimant was apologetic and was completely forthright about his responsibility for the incident. The Claimant's honesty and contrition were the basis of the Organization's contention that dismissal was arbitrary and capricious discipline.

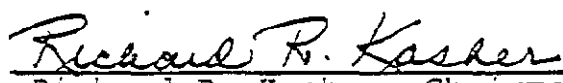
The Claimant was obviously troubled with personal problems. It is likely that his aggression was not prompted merely by an angry expression on the C&S employee's face. Whatever his motivation, the Claimant's behavior was inexcusable. The fact that he is sorry and would like to be reinstated are not mitigating factors. The Carrier and the Claimant's fellow employees should not be subjected to such outbursts again. The discipline fit the offense and accordingly the claim must be denied.

AWARD:

Claim denied.

  
R. Radke, Carrier Member

  
W. E. LaRue, Organization Member

  
Richard R. Kasher, Chairman  
and Neutral Member