

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 13
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 13
	*	

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 Agreement, dated May 19, 1976, on January 30, 1980, by unfairly and improperly dismissing Claimant Joseph McConnell, and subsequently reducing the dismissal to sixty (60) days suspension.

The sixty (60) days suspension shall be removed from the Claimant's record and he be compensated for the time held out of service."

The Claimant, Joseph McConnell, was assigned as a Trackman on the Carrier's Philadelphia Division on January 6, 1980. He had been called to perform emergency snow duty at Shore Interlocking, Philadelphia, and reported for duty at that location shortly after midnight on January 6, 1980.

As the result of an occurrence at approximately 12:35 a.m., on January 6, 1980, the Claimant's Supervisor prepared a notice to the Claimant advising that he was being held out of service, at 2:20 a.m., on that date. The Supervisor was unable to deliver the notice at that time in person, as the Claimant was not on the premises. However, at 4:00 a.m. the Claimant contacted his Supervisor, the Acting Assistant Foreman, and was informed, at that time, that he was being held out of service. At 9:00 a.m., January 7, 1980, this was confirmed by written notification given to the Claimant and he was informed of the reason he was being withheld from service.

A Notice of Trial dated January 9, 1980 was forwarded to the Claimant to attend a trial on January 15, 1980 regarding the following charge:

"Alleged violation of the applicable portion of Rule C in the Amtrak Rules of Conduct in that alcoholic beverage was found in your possession on January 6, 1980 at approximately 12:35 a.m. in the vicinity of Shore Tool House."

A trial was held on January 15, 1980 and completed on the same date with Claimant present and represented. Following the trial, a Notice of Discipline, dated January 30, 1980, was sent to the Claimant notifying him that he was disciplined by dismissal.

By letter dated January 31, 1980, the Claimant appealed the discipline to the Carrier's Assistant Chief Engineer, Philadelphia, PA., who denied his appeal, which was based on a plea of "not guilty", on February 14, 1980.

In a letter dated February 29, 1980, the Assistant Chief Engineer, following the conference and review of the records, reduced the discipline assessed to the Claimant from dismissal to a sixty (60) days suspension. The Claimant was allowed to return to service effective March 6, 1980, following a return to duty physical examination.

The Organization appealed the reduced discipline in accordance with the provisions of the applicable Agreement to the Carrier.

By a letter dated August 27, 1980, the Carrier, after conference and review of the record, denied the appeal of the Claimant.

The Claimant was charged with a violation of Rule C of the Rules of Conduct. This rule provides:

"C. Reporting for work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited."

This case is a companion to PLB No. 2406, Case No. 12. In Case No. 12 the Board sustained a claim filed on behalf of the Claimant therein on the ground that the Carrier failed to demonstrate that the Claimant actually had an alcoholic beverage in his possession. Case No. 12 is distinguishable from the instant case because here the Carrier has presented a preponderance of substantive evidence that the

Claimant herein did have a beer in his possession while on duty.

At approximately 12:35 a.m., on January 6, 1980, the General Foreman and the Project Engineer arrived at Shore Interlocking to inspect the condition of switches. Not seeing the crew assigned to snow removal, the two officials knocked on the door of a tool house. The Claimant in Case No. 12 unlocked and opened the door. The officials entered and noticed two half-empty bottles of beer on a table, and a can of beer in this Claimant's hand, resting in his lap. This Claimant apologized for his bad manners, and asked the General Foreman if he would like a beer.

While the Carrier could not demonstrate that the Claimant in Case No. 12 actually had any alcoholic beverages in his possession, the Claimant here was seen with a can of beer in his lap. He was caught with the goods -- holding the bag, so to speak. He even offered a beer to the General Foreman. Thus, the Carrier has met its burden of showing that the Claimant had an alcoholic beverage in his possession while on duty. Accordingly the claim will be denied.

AWARD: Claim denied.


R. Radke, Carrier Member


W. E. LaRue, Organization Member


Richard R. Kasher, Chairman and Neutral Member