

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*
	* CASE NO. 15
-and-	*
	* AWARD NO. 15
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*
	*

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 26, 1980, by unfairly, unjustly and improperly dismissing Claimant, W. E. Rutledge.

Claimant, W. E. Rutledge, shall be reinstated to the Carrier's service, compensated for all wages lost with seniority and benefits unimpaired and the matter be expunged from his record."

Prior to his dismissal, the Claimant held the position of a trackman in the Carrier's facility at Baltimore, Maryland. On January 25, 1980, at approximately 2 p.m., the Claimant was involved in a serious altercation with a foreman of an interlocking gang working in the vicinity of the Claimant's assignment.

Following an investigation on January 28, 1980, the Claimant was advised that he was being held out of service. On January 29, 1980, the Carrier sent a certified letter to the Claimant confirming that the Claimant was being held out of service and advising him that a notice of trial would follow.

Among the Organization's procedural arguments is that the Carrier failed to deliver a copy of the charge listing the date and location of the trial to the Claimant. The Organization contends that on February 4, 1980, the Claimant phoned the Carrier's office and was informed by a stenographer that his trial was scheduled for the next day, February 5, 1980, at 10 a.m. Contrary to the Organization's contentions, the Carrier asserts that by letter dated January 29, 1980, the Claimant was properly notified to appear for trial on February 4, 1980, regarding the following charge:

"Violation of National Railroad Passenger Corporation, Rules of Conduct, Rule 'J' reading: 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.

In that, on January 25, 1980, Friday at approximately 2 p.m., you engaged in a fight with another employee at Landover Interlocking, while on duty, and on Company property."

The Carrier asserts that the trial was postponed and re-scheduled for February 5, 1980. On February 5, 1980, the Claimant appeared for trial and he was accompanied by a duly authorized representative of the Organization.

The Organization's second procedural argument concerns the conduct of the trial held on February 5, 1980, and addresses the issue of notice. The trial commenced at 10:47 a.m. and only the Carrier's witness was present to testify. The Claimant and his representative, who were also present, asked that the trial be postponed because the Carrier's notice did not permit sufficient time for the Claimant to obtain witnesses. The Conducting Officer, over objection, insisted that the Carrier's witness be permitted to testify, and allowed the Claimant to cross-examine this witness. The trial was recessed at 12:18 p.m. and rescheduled to resume on February 11, 1980, at which time the Claimant was permitted to present his witnesses and evidence.

Regardless of which contention concerning the notice of trial is accepted, the brevity of said notice may be criticized; however, the overall conduct of the trial cannot be impuned since the Claimant suffered no prejudicial effects as a result of the manner in which the trial was held.

The Claimant was aware of the specific subject matter of the trial, and he attended both trials accompanied by duly authorized representatives of his Organization on February 5 and February 11, 1980. At the February 5, 1980 trial, the Conducting Officer refused a request for an immediate postponement, choosing instead to hear testimony and allow cross-examination of the Carrier's witness who was present. The hearing lasted approximately one and a half hours and a recess was called. The Claimant was then given five (5) days in which

to secure his witnesses before the next hearing. Therefore, the Claimant was given both the opportunity to cross-examine the witness testifying on behalf of the Carrier and to present witnesses on his own behalf. While the notice issued was not model pre-trial procedure, it was adequate; and, the Conducting Officer structured the hearings in such manner as to ensure a full and fair opportunity for the Claimant to present his case and to cross-examine opposing witnesses. The Organization has failed to demonstrate that the Claimant was denied his rights of due process or prejudiced in the manner in which the claim was heard.

Turning to the merits, this Board finds that the discipline imposed was reasonably related to the proven offense.

Substantial, uncontraverted evidence established the following: On June 25, 1980, the Claimant was assigned as a Trackman and was working in the vicinity of the Landover Interlocking. At approximately 12:05 p.m., the foreman of another gang working in the area noticed that tires were missing from the Claimant's car, which car was parked in a location adjacent to and viewable from the track site. The foreman indicated to his gang that he thought he knew the individual who had taken the Claimant's tires. The alleged thief, or practical joker, was an acquaintance of the foreman and an individual with whom the Claimant was familiar and had conducted some business dealings, which were apparently unsettled at the time.

At approximately 2 p.m., the Claimant noticed that the tires were missing from his car. He asked the foreman if he had observed anyone around his, the Claimant's, car. The foreman took the Claimant aside and told him that he had not seen anyone around the car, but that he thought he knew who had taken the tires. The Claimant asked for the phone number of the individual whom the foreman asserted he suspected of having taken the tires. The foreman gave the Claimant a phone number, knowing that such phone number was incorrect, and the Claimant left the work site to make his phone call. The foreman returned to his work.

A short while later, the Claimant returned to the work site in a state of extreme agitation, and approached the foreman with an adz raised above his head, shouting profanities. The foreman tried to flee and take cover behind a tool house, but he could not outrun the Claimant. The foreman stopped and faced the Claimant. The Claimant swung the adz and missed the foreman, who ducked under the blow. The two men began to wrestle and during their struggle the Claimant punched the foreman in the face. The foreman managed to grab the Claimant and wrestle him to the ground. When the Claimant said he would cease fighting, the foreman released him. The Claimant walked away, muttering profanities, and he was seen kicking another employee as he left the work site.

The Claimant's actions were nothing short of heinous. Although, the foreman's behavior demonstrated extreme indiscretion, and while it may be reasonably contended that such actions were provocative in the circumstances, this action by the foreman does not mitigate or justify the brutally violent actions or intentions of the Claimant. The foreman might have prevented the entire episode, if he had exercised mere common sense. However, the actions of the Claimant cannot be condoned. In this Board's view, the Claimant's violent actions represent behavior that no civilized society should have to tolerate. And, the Claimant's fellow employees should not be subject to the potentiality of such future outbursts.

In view of the foregoing, this Board finds that the penalty of dismissal was commensurate with the seriousness of the proven offense. 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