

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
- and -	*	CASE NO. 16
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 16
	*	

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 Employes (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 Rules Agreement, effective May 19, 1976, particularly Rules 68, 69, 71 and 73, when it imposed discipline of thirty (30) working days suspension upon Claimant, Larry Brown, Foreman.

The discipline assessed was excessive, arbitrary, capricious and without substantively documented testimony.

Claimant's personnel record be expunged of all data relevant to this matter, and he be compensated for all wages lost resultant thru suspension."

At the time of his suspension, the Claimant held the position of Foreman, High Speed Surfacing Unit, Gang Z102, headquartered at Davis Interlocking, Newark, Delaware. By letter dated June 28, 1979, the Claimant was notified to attend a trial on July 6, 1979 to determine his responsibility in connection with the following charge:

"Violation of NRPC General Rule I, reading in part: employees will not be retained in the service who are... quarrelsome...

Violation of NRPC General Rule J, reading in part: Boisterous, profane or vulgar language is forbidden... threatening...is prohibited.

Violation of NRPC General Rule K, reading in part: Employees must attend to their duties during the hours prescribed....

Violation of NRPC General Rule L, reading in part: Employees shall not...be absent from duty...without proper authority.

On June 26, 1979, in the vicinity of Chapel Street grade crossing between approximately 8:20 p.m. and 9:20 p.m., after J.F. Audley, Assistant Production Engineer related to you that the hours relative to your tour of duty would be changed, you subsequently were quarrelsome and directed improper language and threatening remarks to J.F. Audley, Assistant Production Engineer. Additionally, you did not attend to your duties when you failed to properly encourage your gang to remain on duty and when you refused to work and absented yourself from duty without proper authority."

At the Organization's request the trial was rescheduled to July 5, 1979. The trial was recessed on July 5, 1979 and completed on July 11, 1979. By notice dated July 23, 1979, the

Claimant was assessed a suspension of thirty (30) working days. The matter was properly and timely processed through each level of appeal up to and including the Director of Labor Relations. By notice dated December 3, 1979, the Organization advised the Carrier of its intention to place the matter before this Board.

The record contains conflicting accounts of what occurred on June 26, 1979, but the credible and preponderant evidence reveals the following: On June 26, 1979 the Claimant's tour of duty as Foreman of Gang Z102 was 7:30 p.m. to 6:00 a.m. J.F. Audley, Assistant Production Engineer was at the work site, supervising the project being performed by the Claimant's gang. When the Claimant reported for duty, he was advised by the Assistant Production Engineer that the hours of the gang would be changed to daylight hours, effective July 2, 1979. The Claimant, apparently angered by this news, began arguing with the Assistant Production Engineer. The Claimant's demeanor was intimidating and profane.

A short time later, the Assistant Production Engineer gave the Claimant an order to proceed with his men onto the main line track with certain track machinery. The Claimant responded with verbal, profane abuse, directed at Mr. Audley, suggesting that the Production Engineer had aberrational sexual tendencies. When the Claimant finally ordered his men onto their machines, a machine operator said, "Okay, everything by the book." The

gang worked at a slow rate of speed and the Claimant did nothing in his capacity as Foreman to have the gang work at their regular pace.

The Assistant Production Engineer then noticed that one employee in the Claimant's gang was not wearing proper safety gear. Mr. Audley told the General Foreman that those without proper safety gear would not be permitted to work. The Assistant Production Engineer was then informed that no one in the gang had safety equipment and that no one was going to work. Without waiting for further instructions the Claimant and his gang left their work assignment. The track equipment was left abandoned on the mainline track.

The record establishes that on June 26, 1979 the Claimant was quarrelsome, directed profane language and threatening remarks to a member of supervision and that he did not attend to his duties inasmuch as he failed to encourage his gang to remain on duty and work at a normal rate of speed. The Claimant also refused to work himself and absented himself from duty without proper authority. Thus, a finding of violations of Rules I, J, K and L is supported by substantial, credible evidence. A thirty (30) day suspension is not arbitrary and capricious in light of the seriousness of the offenses. Accordingly, the claim will be denied.

AWARD: Claim denied.




R. Radke, Carrier Member



W.E. LaRue, Organization Member

(I DISSENT)



Richard R. Kasher, Chairman
and Neutral Member

September 20, 1981
Philadelphia, Pa.