

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 17
AWARD NO. 17

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 Claimant, Winston Mills, Trackman, Baltimore, MD, was dismissed in an arbitrary and capricious manner.

Dismissal was prejudiced; predicated on the fact Claimant was Grievance Chairman, duly elected to represent B.M.W.E. members in matters of concern between Employees and Carrier.

Claimant Mills' service record be cleared of all charges resulting from the incidents occurring on June 14, 1979.

Claimant Mills be restored to service, with seniority and all other rights and privileges unimpaired, and he be compensated for all wage losses in accordance with the provisions of Rule 74(d)."

Prior to his dismissal the Claimant was assigned as a Trackman on Gang No. A082. On June 14, 1979 he was removed from service.

By letter dated June 20, 1979, he was notified to attend a trial to determine his responsibility regarding the following charge:

"Violation of NRPC General Rule I...Employees will not be retained in the service who are insubordinate... quarrelsome or otherwise vicious...
Violation of NRPC General Rule J...profane or vulgar language is forbidden. Violence, fighting...threatening or interfering with other employees...is prohibited.

Specification I: On June 14, 1979, at approximately 11:00 AM, in the vicinity of MP 90.6, North Point, you attempted to prevent Assistant Supervisor of Track J. Aviles from discussing work related business with Trackman Milton Lawrence; and you did not obey Mr. Aviles' directives to allow him to speak with M. Lawrence; additionally, you then did not obey Mr. Aviles' directive that you accompany Mr. Aviles to his company vehicle.

Specification II: On June 14, 1979, at approximately 11:10 AM, in the vicinity of MP 90.6, North Point, you directed profane and vulgar language to Assistant Supervisor of Track J. Aviles; you threatened Mr. Aviles with a spike hammer and you physically attacked and injured Assistant Supervisor of Track J. Aviles."

The trial scheduled for July 10, 1979 was postponed at the request of the Claimant's representative until July 17, 1979. On the basis of facts developed at the trial, the Claimant was found guilty as charged and permanently dismissed from service. The Claimant entered an appeal with the Assistant Chief Engineer; the appeal was heard on August 10, 1979 and the charges were sustained; the appeal was progressed to the Director of Labor Relations and was denied; and the case is now before Public Law Board No. 2406.

The applicable Rules of Conduct read as follows:

"I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.

J. 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 or while on duty is prohibited."

Based on the credible evidence of record the Board finds that the discipline imposed was commensurate with the proven offense.

There were two issues in the claim: (1) whether the Claimant was insubordinate in refusing an order given by Assistant Track Supervisor, J. R. Aviles, to discuss privately a question concerning an alleged safety gear violation of another Trackman; and (2) the Claimant's responsibility regarding a physical altercation that followed the above alleged insubordination.

In addressing the first issue this Board finds that the Claimant was not insubordinate when he refused to privately discuss an alleged safety equipment violation of an employee working with the Claimant in Gang No. A082 with the Assistant Track Supervisor. We further find that the Claimant was not insubordinate when he used "vigorous demeanor" in discussing the matter with the Supervisor in front of other employees.

The entire episode began when the Assistant Track Supervisor noticed that a Trackman, Milton Lawrence, was not wearing his safety goggles. The Claimant, a duly designated Organization representative, protested that Mr. Lawrence had dropped his glasses, and was bending down to retrieve them, when the Supervisor noticed him, and told him he was being charged for a safety violation. The Claimant was acting as an Organization representative when he responded to the charge leveled against an employee he represented. The Claimant would have been better advised to have not responded, and waited to raise defenses and pursue the matter if, and when, it reached the formal steps of the grievance process. However, the Claimant, in his position as representative and in the circumstances of the moment, was not insubordinate in refusing to discuss the matter privately. In light of the Claimant's Organization position, his insistence on an open discussion did not rise to the level of insubordination.

The Claimant's behavior in the course of events that followed, however, was violent and threatening and in clear violation of Rule J. Mr. Perry, who was checking FRA violations with the Supervisor at the time, credibly described those events as follows: When the Claimant interceded on behalf of Mr. Lawrence, the Supervisor told the Claimant that he was not talking to him (about the violation) but to Mr. Lawrence. The Supervisor also told the Claimant that he wanted to speak with him privately at his truck.

When the Claimant refused, the Supervisor instructed a Foreman to remove the Claimant from duty. The Claimant then left and entered a bus. A short time later he stood up and began calling the Supervisor disparaging names. He was told to watch his language. The Claimant then threw down his hat and goggles and went back down to the track. Several employees restrained him after he picked up a hammer and he threw the hammer down. As the Supervisor was walking away from the scene, the Claimant struck him in the back of the neck. The Supervisor fell to the ground. The Claimant kicked him several times. The Supervisor was eventually helped off the ground by Mr. Perry, who later drove him to the hospital.

The Claimant's account of what happened is that, after their discussion, the Supervisor followed the Claimant back to the track. He allegedly heard someone shout, "Look out, he's got something in his hand." The Claimant, acting on the instincts he was taught as a Marine Green Beret instructor, turned and defended himself by "beating the hell" out of Mr. Aviles before the latter had a chance to "attack" him. The Claimant also testified that he was aggravated and provoked by the manner in which Mr. Aviles handled the alleged safety violation.

A reading of the credible evidence of record reveals that the Claimant leveled an unprovoked, extraordinarily violent attack at the Supervisor. While the Supervisor may have been aggressive on his part during the discussion with the Claimant,

this verbal confrontation did not justify the violent physical response of the Claimant. Dismissal was reasonable discipline in light of the seriousness of the offense. Accordingly, the claim is denied.

AWARD: Claim denied.



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

September 20, 1981
Philadelphia, PA