

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 24
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 24
	*	

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:

- "(a) The Carrier violated the effective Agreement dated May 19, 1976, on June 13, 1980, when it arbitrarily and capriciously dismissed Claimant Anthony Amoroso.
- (b) The Claimant be restored to service with all benefits and seniority unimpaired and compensated for all wage loss suffered."

The Claimant, Anthony Amoroso, was employed by the Carrier on March 20, 1980, as a B & B Ironworker at Newark, New Jersey.

On that date he became involved in a locker room "scuffle" with the Welding Foreman. In a letter dated March 26, 1980, the Claimant was directed to report for trial in connection with the following charge:

"Violation of Amtrak Employee Rules of Conduct Manual, Rule J, which states, '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.' This is in connection with your being involved in a scuffle with Welding Foreman, Owen Roth, in the Locker Room, Penn Station, Newark, N.J., on March 20, 1980, at 7:30 a.m."

By mutual agreement the trial was twice postponed and finally held on June 4, 1980. The Claimant was present at the trial and accompanied by a representative of the Organization. The Claimant was found guilty as charged and was dismissed from the Carrier's service effective June 13, 1980. The Claimant appealed his dismissal, which was denied by the Carrier in a letter dated July 31, 1980.

The record shows that there had been some contention between the Claimant and the Welding Foreman, Owen Roth, about blocked access to their lockers. On the morning of March 20, 1980, Mr. Roth testified that when he saw the Claimant throwing two lockers about, he asked the Claimant what he was doing, and the Claimant came "charging out from the lockers and pushing." Mr. Roth testified that it was the Claimant who pushed first. (Tr. p. 3).

There is no dispute that a physical altercation took place between the Claimant and Mr. Roth; nor is there any dispute that the act of violence that began the incident, the throwing of lockers, was committed by the Claimant. The Organization argues that the Claimant was denied a fair and impartial trial, and that dismissal was unduly severe in this case in view of evidence to the effect that Mr. Roth pushed first.

The record shows that the Trial Officer had a conversation with Mr. Roth concerning the blocked access to the lockers shortly before the pushing incident took place. However, the fact that he had talked with the Foreman prior to the scuffle, does not necessarily imply prejudice on his part. The cases cited by the Organization involve behavior by the hearing officer described in the following terms:

"...the hearing...was conducted by an officer who prejudged...guilt and did everything possible to sustain that prejudgment." (Award 119 SBA No. 279).

"...The Claimant would testify to a transaction and the Hearing Officer would inject a contrary statement to controvert the direct testimony." (Second Division Award 6329).

"The hearing officer persistently led Carrier's witnesses in a manner indicative of at least prejudgment." (Third Division Award 20092).

The Board's review of the record shows no activity on the part of the Trial Officer that even faintly resembles the misbehavior quoted above. We find that the Claimant received a fair trial.

The Organization points to the Amtrak Police Department Investigation Report made out shortly after the pushing incident occurred. In that Report, Foreman Roth is quoted as having pushed first: "I pushed him (the Claimant) aside, to get by. He pushed back and started yelling."

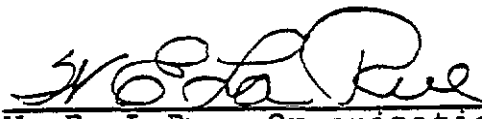
However, as previously stated, Mr. Roth testified at the trial that the Claimant began the scuffle by throwing lockers and pushing first. Aside from a reference to the Amtrak Police Report, that testimony was not contradicted at the trial. At one point in the trial the Claimant stated that there were witnesses and evidence, not immediately available, which would support his claim. When asked if he was requesting postponement of the trial in order to bring in the witnesses, he stated he was not. (Tr. pp. 7, 8).

Under the circumstances, and based on the record, this Board finds that the Claimant's laying of hands on Foreman Roth can not in any manner be construed as a claim of self-defense. The Board's view is strengthened by the fact that less than two years prior to the incident involved in this case, the Claimant was disciplined for choking and striking a fellow employee, a fact which corroborates that the Claimant has displayed a propensity for violence. Accordingly, the Claimant was properly cited, found guilty, and dismissed from service.

AWARD: Claim denied.



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

February 3, 1982
Philadelphia, PA