

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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| NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) | * |              |
|  | * |              |
| -and-  | * | CASE NO. 29  |
|  | * |              |
| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES      | * | AWARD NO. 29 |
|  | * |              |

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 March 12, 1980, by unfairly suspending Claimant Andrews for five (5) working days. The penalty was too severe for the offence.
- (b) The Claimant shall be compensated for the time held out of service and the discipline be reduced to a reprimand."

The Claimant, Andre Andrews, was employed by the Carrier as a Trackman of the Philadelphia Division, on February 7, 1980.

His tour of duty on that day was 8:00 a.m. to 4:30 p.m., with an advertised lunch break from 12:00 to 12:30 p.m. At 3:20 p.m., the Claimant was seen by the Assistant Division Engineer in a bar playing pool with other Amtrak employees in his work group. Upon seeing the Assistant Division Engineer, the Claimant and the other employees rushed out the bar's rear entrance.

By letter dated February 11, 1980, the Claimant was notified to appear for trial on February 26, 1980, in connection with the following charge:

"Violation of the applicable portion of Rule "K" of the Amtrak Rules of Conduct in that you were observed in the pool room at Spada Bar at 3:20 p.m. on February 7, 1980, while on duty and under compensation from Amtrak. Your advertised meal period is from 12:00 to 12:30 p.m."

Rule "K: reads as follows:

"Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisors."

The Claimant was present at his trial accompanied by a duly authorized representative of the Organization. The Claimant was found guilty as charged and was assessed a five (5) day suspension as discipline. The Claimant's appeal of the discipline was denied by letter of May 5, 1980.

As stated above, it is the claim of the Organization that the penalty of a five (5) day suspension was too severe for the offence. The Organization suggests that a reprimand would have been appropriate, and bases this on the fact that he went to the

pool room with the Foreman and Welder he was assigned to work with that day.

This Board finds that, under the circumstances, the discipline assessed by the Carrier was not overly severe. The fact that other Amtrak employees were involved does not mitigate the Claimant's culpability. The Carrier is entitled to expect that its employees will, while on compensated time, devote themselves to work on behalf of the Carrier. There are no mitigating circumstances in this case and accordingly, the claim must be denied.

AWARD: Claim denied.

  
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R. Radke,  
Carrier Member

  
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W. E. LaRue,  
Organization Member

  
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Richard R. Kasher, Chairman  
and Neutral Member

February 3, 1982  
Philadelphia, PA