

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 32

AWARD NO. 32

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:

- "(1) The Carrier, without just and sufficient cause, improperly disciplined Mr. Jose Rodriguez on charges that
- (a) he allegedly absented himself from duty between 11:30 A.M. and 3:30 P.M. on June 13, 1980, without proper authority (Carrier's File No. MWE-D-019);
 - (b) he allegedly was absent from duty at 1:05 P.M. on July 7, 1980, without proper authority and that he allegedly was drinking in a bar at that time in violation of Rule 'C' (Carrier's File No. MWE-D-020).
- (2) The Claimant's personal record be cleared of the charges; he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

At the time of his dismissal from service, Claimant Jose Rodriguez was employed by the Carrier as a Trackman at Chicago, Illinois. The record indicates that Claimant was charged with violations of Rules C, K and L, of the Carrier's Rules of Conduct. Specifically, on June 13, 1980, Claimant was alleged to have absented himself from duty without proper authority between 11:30 a.m. and 3:30 p.m.; and on July 7, 1980, Claimant was alleged to have been absent from duty without proper authority at 1:05 p.m. at which time he was drinking in a bar. Two separate investigations, one for each incident, were held on July 18, 1980. Claimant was present at both investigations and was accompanied by a duly designated representative of the Organization. At each investigation the Claimant stated he had not received written notice of the investigation, but signified his willingness for the investigation to proceed. By letter dated July 28, 1980, the Carrier notified Claimant that he had been found guilty as charged and that he was dismissed from service, effective that date.

Rules C, K, and L state:


- C. "Reporting to work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited."
- K. "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 supervisor."

- L. "Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place without proper authority."

Although the Organization has raised several arguments in Claimant's behalf, the record, including Claimant's own admissions, clearly establish Claimant's guilt. On June 13, Claimant requested and was denied permission to be absent from duty at 11:30 a.m. Nevertheless he did not return to work after he left for lunch at 11:30 a.m. There is no question but that Claimant understood that he had been denied permission to be off duty for the rest of the day. This Board cannot agree that in addition to denying permission to Claimant to be absent, it was necessary for the Assistant District Engineer to "emphatically" order Claimant back to work.


The record is similarly conclusive that Claimant took himself off duty without proper authority on July 7, 1980, and that he was drinking beer when he should have been on duty. The Carrier has met its burden of proof concerning both incidents, and there is no basis in the record for the Board to substitute its judgment for that of the Carrier and mitigate the penalty of dismissal. Accordingly, this claim must be denied.

AWARD: Claim denied.


L. C. Hriczak, Carrier Member


W. E. LaRue, Organization Member

June 4, 1982
Philadelphia, PA


R. R. Kasher, Chairman and
Neutral Member