

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CASE NO. 39

AWARD NO. 39

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 March 19, 1976, on July 2, 1980, by unfairly dismissing the Claimant, Ezeakiel Woody.

"(b) The Claimant shall be compensated for the time held out of service and restored to service with seniority unimpaired."

The Claimant, Ezeakiel Woody, entered the Carrier's service on June 15, 1977. Prior to his dismissal from the Carrier's service he was employed as a Trackman headquartered in Wilmington,

Delaware. By letter dated April 7, 1980, the Claimant was directed to report for trial on April 29, 1980, in connection with the following charge:

"Violation Amtrak-BMWE Absenteeism Agreement.
Unauthorized absence on the following dates:
March 25, 27, 1980."

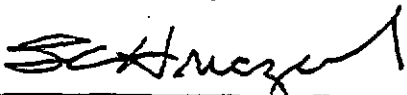
At the request of the Claimant, the trial was postponed until May 13, 1980. The trial was again postponed and rescheduled for May 27, then again for June 10, and then again for June 24, all at the Claimant's request. The trial was finally held on June 24, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization. The Claimant was found guilty of the charge and was dismissed from service by letter dated July 2, 1980.

The Claimant's defense in this case rests on lack of notice. However, the record makes it clear that the Claimant knew about the trials scheduled for April 29, May 13, May 27, and June 10, and requested postponement in each instance. These postponements gave the Claimant ample time to prepare his case for trial. Further, as noted above, the Claimant was present and accompanied by a representative of the Organization at the June 24, trial.

The record provides substantial support for the Carrier's charge of absence without permission on the days in question. In view of the Claimant's previous discipline for absenteeism within the preceding 12 month period, the action of removal

from the Carrier's service is not excessive or harsh. Accordingly,
this claim must be denied.

AWARD: Claim denied.


L. Hriczak, Carrier Member


W. E. LaRue, Organization Member


Richard R. Kasher, Chairman
and Neutral Member

April 1, 1983
Philadelphia, PA