

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

Brotherhood of Maintenance of
Way Employes

-and-

National Railroad Passenger
Corporation (Amtrak)

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Case No. 4
Award No. 4

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second of the Railway Labor Act and the applicable rules of the National Mediation Board.

The Brotherhood of Maintenance of Way Employes and the National Railroad Passenger Corp. (AMTRAK) (hereinafter the Organization and the Carrier respectively) are duly constituted labor organization and carrier representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

On October 8, 1979, a hearing was held in the Carrier's offices in Philadelphia, Pennsylvania at which the below-stated claim was addressed:

STATEMENT OF CLAIM

"(a) The Carrier violated the Rules Agreement effective May 19, 1976, as amended, particularly Rules 68, 69, 71 and 74, When it assessed discipline of thirty (30) days' suspension on M. W. Repairman, George Lazar on January 10, 1978.

(b) Claimant Lazar's record be cleared of the charge brought against him on December 14, 1977.

(c) Claimant Lazar be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained (thirty and one-half working days, plus Christmas eve, Christmas day and New Year's day holidays) in accordance with the provisions of Rule 64. Claimant also be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers Group Policy, GA-23000."

Claimant was a maintenance of way repairman employed in the Carrier's maintenance of way shop in Bristol, Pennsylvania. On the morning of December 9, 1977 the Claimant was on duty. The record reflects that an unidentified source informed the Claimant's General Foreman that the Claimant had placed a tool box, property of the Carrier, in the trunk of his personal automobile. The General Foreman asked the Claimant to accompany him to the Claimant's automobile and to open the trunk of his car. This the Claimant did in the company of his General Foreman and a representative of the Carrier's Police Department. Upon opening the trunk an empty tool box belonging to the Carrier was discovered. The Claimant never denied taking the tool box. However, his testimony, corroborated by the testimony of several fellow workers, was that the Claimant was going to use the empty tool box for the purpose of bringing some of his own tools into the shop facility, which tools were needed for the performance of the Claimant's as well as fellow employees' work. The testimony at the trial also indicates that the Claimant had intended to advise his General Foreman regarding his desired use of the tool box.

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On the basis of the discovery of the tool box in the Claimant's personal automobile the Claimant was charged with a violation of Rule I of the Carrier's Rules of Conduct which reads in part "Employees will not be retained in service who are...dishonest...." A trial was held and the Claimant was found to be guilty of the charge of improper possession of a company tool box. Discipline was imposed in the form of a thirty (30) day suspension. The discipline was appealed by the Organization through the appropriate steps of the grievance procedure and comes to this Board for resolution.

It is the position of the Carrier that the trial record conclusively shows that the Claimant was guilty of the offense with which charged; that the discipline imposed was commensurate with the offense involved; that the Carrier's action in disciplining the Claimant was not arbitrary, capricious or unreasonable; and, that there is no basis for this Board to make any change in the discipline imposed.

It is the position of the Organization that the removal of the Claimant from service, pending trial, without a reason for the action being given, violated the Agreement and that Claimant's removal, in the face of known circumstances, was unjustified and an abuse of managerial prerogative. The Organization further contends that the charge, as presented, was ambiguous. And finally, the Organization argues that the charge was not proven and thus the discipline imposed was unwarranted.

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There is no doubt in reviewing the record before us, and in fact the Claimant so admits, that the tool box was taken from the Carrier's property without permission and placed in the Claimant's personal automobile. Certain relevant facts in the trial record shed illumination upon the incident which we are asked to assess. First, the tool box in question apparently had been one that was used around the shop as an empty box for transporting odd tools from job site to job site. There were no regular tools associated with this tool box and the box was used by a variety of employees for the purpose described above. The record also reflects that the Claimant never denied having taken the tool box and fully cooperated with the Carrier when he was asked to accompany his General Foreman and a Police Department representative for the purpose of inspecting the trunk of his automobile. A quotation from the trial record, which was cited in the Carrier's submission, capsulizes the above findings of fact. It reads:

"(Claimant speaking) On Friday, December 9, 1977 at 8:30 a.m. I had a chance during my working hours to take a tool box that I intended to use to bring in air tools and hoses to the shop for use indefinitely. I looked for General Foreman, Steve Scott, for permission but he wasn't available. My working Foreman was in Welding School and the instructor didn't wish for me to go in and bother him. A couple of guys I work with were informed that I was taking the box out and I was going to bring in tools - go over my tools on the week-end and bring them in Monday for usage by me and fellows in my area. I put the box in my car and I proceeded to go back to work."

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The credible evidence of record convinces us that a critical element of dishonest behavior and/or thievery, intent to appropriate for one's own use, did not exist in this case. We find that the Claimant made a serious error in judgment when he did not wait to receive permission from a supervisory employee before he took the tool box for the purpose that he did. The evidence before us leads to the conclusion that permission would have been, in all likelihood, granted and that the use of the tool box for bringing an employee's own tools would have been proper. In fact, such use would have been of benefit to the Carrier. We find, however, that the Claimant cannot be totally excused for his error in judgment. In view of the employee's prior unblemished record, we find that the suspension of thirty (30) days was excessive under the circumstances. Therefore we will grant the relief sought by the Organization.

AWARD: Claim sustained.

Richard R. Kasher
Richard R. Kasher, Chairman
and Neutral Member

William E. LaRue
William E. LaRue,
Organization Member
P.L. Board No. 2406

S. H. Helzinger
S. H. Helzinger,
Carrier Member
P.L. Board No. 2406

DATE: 12/28/79

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