

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CASE NO. 40

AWARD NO. 40

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 September 17, 1980, by unfairly and unjustly dismissing the Claimant, George Rayfield.
- "(b) Claimant Rayfield shall be reinstated to service and benefits unimpaired and compensated for the time held out of service."

The Claimant, George Rayfield, entered the Carrier's service on August 1, 1977. Prior to his dismissal from the Carrier's service he was assigned as a Truck Driver/Foreman at Wilmington,

Delaware. By notice dated August 22, 1980, the Claimant was directed to report for trial on September 2, 1980, in connection with the following charge:

"Violation of Rule F of the Amtrak Rules of Conduct which states in part... 'Employees will not be retained in service who are careless of the safety of themselves or others.'

"In that on August 14, 1980, at approximately 2:35 p.m. in the vicinity of MP 9.5 while driving a company vehicle, you drove off the road and caused personal injury to pedestrian (and fellow employee) Michael Gibson and damage to the company vehicle."

The trial began on September 2. The Claimant was present and accompanied by a duly designated representative of the Organization. However, the trial was recessed and rescheduled, at the Claimant's request, so that he could gather statements for his defense concerning the mechanical condition of the vehicle he was driving at the time of the incident. The trial reconvened on September 10, with the Claimant and his representative again present. The Claimant was found guilty of the charge and was dismissed from service by letter dated September 17, 1980.

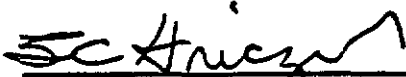
The record in this case contains evidence which establishes beyond doubt that the Claimant had argued with Mr. Gibson and that at some point after the argument the Claimant was driving a company vehicle (carryall). The carryall chased Mr. Gibson, who was on the opposite side of the street. The carryall went up the curb, chased Mr. Gibson into the bushes and brushed against him on his right side. Despite the fact that the Claimant had been granted

a postponement in order to gather statements concerning the mechanical condition of the carryall, there was no evidence presented at the trial, other than the Claimant's unsubstantiated assertions, that the incident was due to steering or other defects in the vehicle.

The Organization urges this Board to sustain this claim based on certain inconsistencies in the record concerning the date of the incident, and on alleged procedural defects concerning the sufficiency of the notice and specificity of charges. The Organization's position cannot be supported. While the record does contain the inconsistencies referred to, these are insignificant when weighed against the eyewitness accounts which amply support the Carrier's charges. Further, any problem with the initial notice was certainly corrected by the postponement of the trial, at the Claimant's request. The charges were sufficiently specific so that the Claimant knew well what he had to defend against; in fact, he asked for the postponement in order to gather statements for his defense.

This Board could also notice that the Claimant was additionally guilty of "bad aim," but will not comment on that matter since it does not form part of the charge. The offenses which are contained in the charge, and which the Carrier has proved, were flagrant. They endangered the life and limb of a fellow employee, and in such circumstances, dismissal is not an unduly severe penalty. 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