

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)		*
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-and-		*
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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES		*
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CASE NO. 41

AWARD NO. 41

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 Rules Agreement dated May 19, 1976 on May 19, 1980, when without just cause assessed discipline of thirty (30) calendar days' suspension to Claimant Felix Morgan.

(b) The Claimant shall be paid for all wages lost and the matter be expunged from his record."

The Claimant, Felix Morgan, entered the service of the Carrier on April 11, 1977 as a Trackman. On April 24, 1980,

the date of the incident giving rise to this claim, the Claimant was assigned by Supervisor Thurman to be a helper for Lubricator Greer Gaines.

By letter dated May 1, 1980, the Carrier notified the Claimant to appear for trial on May 13, 1980 in connection with the following charges:

"The Violation of Rule of Conduct A, that part which reads: Employees must render every assistance in carrying out the Rules and Special Instructions and must promptly report to their supervisor any violation thereof.

Specifications: In that on April 24, 1980 in the vicinity of Frankford Junction, between the hours of 9:00 AM and 1:30 PM, Trackman Felix Morgan failed to report to the Track Supervisor, J. Thurman, the information that employee Gaines was under the influence of alcohol while on duty which is a violation of Rule of Conduct C."

The Carrier held the trial as scheduled. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated May 19, 1980, the Carrier informed the Claimant that it found him guilty as charged and assessed him a penalty of 30 calendar days' suspension.

The carrier maintains that the Claimant violated Rule A when he did not notify his supervisor, J. Thurman, that employee Gaines was drinking on duty. Carrier Rule A requires

employees to promptly report to their supervisor any violation of Carrier rules. The Organization maintains that the Claimant complied with this Rule when he told Supervisor Pervis about Gaines' drinking.

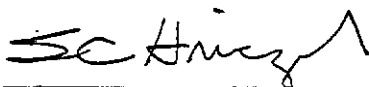
The record establishes that on the morning of April 24, 1980, Supervisor Thurman assigned the Claimant to work with Lubricator Greer Gaines. Gaines was assigned a Carrier vehicle to drive to assignments in the Philadelphia area. Sometime between 9:00 A.M. and 1:30 P.M. Gaines, while on duty, began drinking in the Claimant's presence. This is a clear violation of the Carrier's rules. Between noon and 2:00 P.M. Gaines and the Claimant drove to the vicinity of Frankford Junction. Gaines told the Claimant he could no longer control the truck. The Claimant could not drive the truck because it was a stick shift. The Claimant then left the vehicle and contacted the closest supervisor, Mr. Pervis. The Claimant told Pervis that Gaines had been drinking and asked him to provide a driver for the vehicle. The Claimant never told Supervisor Thurman of Gaines' drinking.

This Board, after reviewing all relevant evidence, concludes that the Claimant did substantially comply with Rule of Conduct A. The Claimant rendered assistance in carrying out the Carrier's Rules by promptly reporting Gaines' drinking to the Supervisor that was most readily available.

Although the Claimant may allegedly have been guilty of some lack of best judgment by not reporting Gaines' drinking to Supervisor Thurman, it is uncontradicted that he reported the drinking to Supervisor Pervis. Pervis was the closest supervisor and there is no showing that Thurman was the supervisor or the only supervisor contemplated by the Rule to whom violations were to be reported.

Accordingly, this claim must be sustained.


AWARD: Claim sustained. The Carrier shall pay the Claimant all wages lost as a result of the 30 day suspension and expunge all reference to the matter from his record. This Claim to be paid in thirty (30) days.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member


Richard R. Kasher, Chairman
and Neutral Member

November 14, 1983
Philadelphia, PA