

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 43

AWARD NO. 43

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 November 19, 1980 by arbitrarily and capriciously suspending the Claimant Julius Cephas for fifteen (15) working days.

(b) The Claimant shall be fully compensated for wage loss resultant to be discipline of fifteen (15) working days, suspension in the matter expunged from his record."

The Claimant, Julius Cephas, entered the service of the Carrier on June 1, 1980. On September 14, 1980, the date of the incident giving rise to this claim, the Claimant was a Trackman assigned the task of pulling ties at the location called "Six Roads."

By letter dated September 19, 1980, the Carrier notified the Claimant to appear for trial on October 2, 1980 in connection with the following charges:

"Violation of Rule L of the Amtrak Rules of Conduct which states: 'Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority,' when you were observed sleeping at approximately 4:30 A.M., Sunday, September 14, 1980 in the area designated as Six Roads."

The trial was held on November 7, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization. By Notice dated November 19, 1980, the Carrier informed the Claimant that it found him guilty as charged and assessed him a fifteen day suspension.

The Carrier maintains the record evidence supports its position that the Claimant was sleeping while on duty during the early morning of September 14, 1980, and a fifteen day suspension is appropriate as discipline for the offense. The Organization contends that the Claimant was not sleeping and was on his lunch break when the incident occurred. The Organization further maintains that the Carrier did not give the Claimant a fair and impartial trial, as required by Rule 68 of the effective

Agreement, in that M. E. Simmers, the Conducting Officer at the trial, was involved in the Carrier's initial decision regarding the assessment of discipline for the incident. The Carrier contends that the Claimant did receive a fair trial; that there was nothing improper in the dual roles played by Simmers; and, that the Organization did not provide any specific examples of unfair treatment by the Conducting Officer.

The record establishes that the Claimant was with two other employees when allegedly found sleeping by General Foreman Leftridge. Leftridge testified that it was his belief that while only the Claimant was sleeping, the other two employees were sitting down and not working. Leftridge consulted with Simmers about what disciplinary action to take against the two employees he found awake. Simmers told Leftridge to find a Rule for their neglect of duties.

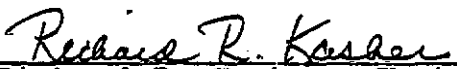
It is this Board's opinion that the Claimant did not receive a fair and impartial trial and that the claim should be sustained. Simmers should not have acted as Hearing Officer for the Claimant's trial. This Board is not holding that Carrier officers may not assume multiple functions or roles in the disciplinary process. However, there is the appearance here that Simmers may have made an initial determination of guilt, and participated in the assessment of and penalties for, employees' involvement in the alleged incident. He then served

as the Conducting Officer in a trial concerning that same incident. This creates an appearance of prejudice and a presumption that was not rebutted that the Carrier did not give the Claimant a fair and impartial trial. The Organization does not need to show actual prejudice toward the Claimant. Accordingly, the claim must be sustained and the Board need not address the merits of the matter.

AWARD: Claim sustained. The Carrier shall fully compensate the Claimant for lost wages resulting from the fifteen day suspension, and expunge all reference to this matter from his record. This claim is to be paid in thirty (30) days.

  
L. C. Hriczak, Carrier Member

  
W. E. LaRue, Organization Member

  
Richard R. Kasher, Chairman  
and Neutral Member