

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 44

AWARD NO. 44

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 January 12, 1981 by unfairly and without just cause, dismissing Claimant Julius Cephas.

(b) Claimant Cephas shall be reinstated to Carrier's service, compensated for wage loss suffered and have all seniority and other rights returned unimpaired."

The Claimant, Julius Cephas, entered the service of the Carrier on June 1, 1980. On December 18, 1980, the date of the incident giving rise to this claim, the Claimant was a Trackman working in the vicinity of "Landlith Interlocking." By notice dated December 19, 1980, the Carrier instructed the Claimant to appear for trial on January 7, 1981, in connection with the following charge:

"Violation of the National Railroad Passenger Corporation (AMTRAK) Rules of Conduct, specifically Rules K and L in that you did not comply with instruction from your supervisor Jay LaPlume at approximately 12:20 P.M. and that you were found sleeping by the Engineer Special Projects, Jay Manzini, at approximately 1:06 P.M. during your tour of duty on December 18, 1980, in the vicinity of Landlith Interlocking."

The Carrier sent the Notice return receipt requested.

The Carrier received a receipt dated December 30, 1980, that contained the signature "Julius Cephas." The Carrier held the trial on January 7, 1981 as scheduled, however the Claimant did not appear. After waiting for approximately one hour and 45 minutes, the Conducting Officer proceeded with the trial in absentia. By notice dated January 12, 1981, the Carrier informed the Claimant that it had found him guilty of the charge and dismissed him effective immediately.

The Carrier contends that the Claimant was properly notified of the trial, and that it acted properly in proceeding in absentia. The Carrier further contends that the evidence produced at this trial supports its position that the Claimant

was sleeping on duty, and the penalty of discharge is appropriate. The Organization contends that the Carrier should not penalize the Claimant for failing to attend the trial. The Organization acknowledges that the Carrier has the right to take corrective action against employees found sleeping, but contends that dismissal is too severe a penalty in this instance. The Claimant appeared at the hearing before this Board, and contended for the first time that: (1) the Carrier's action was a result of racial prejudice; (2) he never signed the return receipt for the Notice of Trial; and, (3) he was not working when found asleep on December 18, 1980 because he was ill.

This Board has determined that the Carrier acted properly in proceeding with the trial in the absence of the Claimant. The Carrier sent a Notice of the Trial to the Claimant at his last known address, and the Carrier received a return receipt it reasonably presumed the Claimant signed. If a Claimant fails to appear at his trial after being properly notified, the Carrier is not obligated to postpone the trial. There was no evidence below that the Claimant did not receive the Notice of the Trial or that the signature on the return receipt was not authentic.

The record evidence is substantial and has convinced this Board that the Claimant was guilty of sleeping on duty, and thereby he was stealing the Carrier's time.

The record shows that on December 18, 1980, James LaPlume, Foreman, Panel Renewal Systems, told the employees to return to work at the conclusion of a lunch break. Shortly thereafter, LaPlume checked for stragglers who had taken their lunch break on a bus. He found the Claimant lying down across two seats of the bus. LaPlume instructed him to return to work and informed him it was the last time he would tell him to do so. Approximately 45 minutes later, LaPlume and John Manzini, Engineer Special Projects, noticed that the Claimant was not working. They returned to the bus and found the Claimant lying down. Manzini twice told the Claimant to wake up. When the Claimant was roused he responded in a groggy fashion to questions asked by Manzini. It is clear that the Claimant went to sleep on the job in a bus out of sight of supervision, after being specifically advised he was expected to work.

In spite of the Organization's best efforts to defend the Claimant's actions, this Board has concluded that the evidence establishes the Claimant was missing from his assignment because he was sleeping, and not because of illness. If the Claimant was ill, he is presumed to know that he should have sought permission from appropriate supervisory personnel to mark off. This Board has further concluded that the Carrier did not abuse its discretion by discharging the Claimant. Accordingly, this Claim must be denied.

AWARD: Claim denied.

L. C. Hriczak
L. C. Hriczak, Carrier Member

W. E. LaRue
W. E. LaRue, Organization Member

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

November 14, 1983
Philadelphia, PA