

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 46

AWARD NO. 46

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 30, 1980, when it arbitrarily and capriciously dismissed Claimant Raphael A. Vendetti.

(b) The Claimant be restored to service with all benefits and seniority unimpaired; to be compensated for all wage loss; and the matter expunged from his record."

The Claimant, Raphael A. Vendetti, entered the service of the Carrier on March 30, 1977. On September 3, 1980, the Claimant was a Foreman in the Track Department.

By letter dated September 12, 1980, the Carrier informed the Claimant that it was holding him out of service because of his alleged misuse of a gasoline credit card. On the same date the Carrier sent the Claimant a notice to appear for trial on September 18, 1980 in connection with the following charges:

"Violation of NRPC General Rule I, reading in part:

Employees will not be retained in the service who are ... dishonest...

Violation of NRPC General Rule K, reading in part:

Employees must ... comply with instructions from their supervisor.

Violation of NRPC General Rule V, reading in part:

Employees must be specifically authorized to use the Company's credit...

When on September 3, 1980, you used an AMTRAK credit card to purchase gasoline for a personal vehicle, although, you did not have proper authority for such action. Furthermore, you had previously been instructed by J. F. Audley, Asst. Div. Engr. that you should not use an AMTRAK credit card to purchase gasoline for your personal vehicle."

Due to a clerical error, the Carrier's letter and notice of September 12, 1980 were inadvertently sent to the wrong address and not received by the Claimant. However, on September 14, 1980, the Carrier verbally informed the Claimant that he was out of service. The Claimant did not thereafter return to work. On September 17, 1980, the Claimant received and signed the September 12 letter, which informed him that he was out of service, and the notice of trial. The trial was held on September 18, 1980 as scheduled. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated September 30, 1980, the Carrier informed the Claimant that it found him guilty as charged and had dismissed him effective immediately.

The Carrier maintains that the Claimant behaved dishonestly by using the Carrier's credit card to purchase gasoline for his personal vehicle when he was not specifically authorized to do so and that discharge is an appropriate penalty. The Organization argues that this Board should sustain the claim because the Carrier violated Agreement Rules 69 and 71 by not notifying the Claimant by mail that he was out of service and by not timely notifying him or the Organization of the trial in this matter. The Organization also maintains that the Claimant did not use the credit card for his personal vehicle.

The record establishes that during the time period preceding the alleged misuse of the credit card the Claimant

was using his personal vehicle to transport Carrier employees to work locations. The Claimant was entitled to mileage compensation for using his vehicle for this purpose. On September 3, 1980, an AMTRAK credit card in the Claimant's care was used to purchase gasoline for a vehicle owned by the Claimant's wife. The purchaser signed the credit card slip as "R. Vendetti." The Claimant did not have permission to use the credit card to purchase gas for his personal vehicle as required by Carrier Rule V. When the Carrier was informed of the possible misuse of the credit card, it confronted the Claimant. The Claimant admitted to Robert Reininger, Staff Engineer, that he had used the credit card for his personal vehicle and that he had done so in lieu of any kind of claim for mileage. The Claimant told Reininger that he had intended to tell someone but had not done so. Further checking by the Carrier established that the Claimant had submitted an expense voucher claiming mileage for the time in question. At the trial, the Claimant stated he had not used the credit card for his personal vehicle, the signature on the credit card slip was not his, and at the time that he allegedly used the card he was home in bed. The Claimant testified that a "gentleman friend" who had been staying at his home subsequently admitted to him that he had used the credit card.

This Board has concluded that the Organization's procedural contentions lack merit. The Carrier made a good faith effort

to give the Claimant proper notice of the trial and to notify the Claimant that he was out of service as of September 12, 1980. Although a clerical error prevented the Claimant from receiving written notice of these actions until September 17, 1980, there exists no evidence that this inadvertant failure prejudiced the Claimant in any way. The Claimant was verbally informed on September 14, 1980 that he was out of service and he did not report to work after that date. At no time during the trial did the Claimant or the Organization request a postponement or state they were not fully prepared to proceed with their defense.

This Board also concludes that there is substantial evidence in the record to support the Carrier's finding that the Claimant acted dishonestly by using an AMTRAK credit card to purchase gasoline for his personal vehicle. It is uncontradicted that the Claimant initially admitted to Staff Engineer Reininger that he had used the credit card for his personal vehicle. An examination of the signature on the credit card slip reveals that it is virtually identical with Vendetti's personal signature. The Carrier has clearly met its burden of proving the Claimant's guilt. Accordingly, this claim will be denied.

AWARD: Claim denied.

SC 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