

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	CASE NO. 47
	*	
-and-	*	
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 47
	*	

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 June 25, 1980 when it removed Claimant Daniel Alley from service and on July 21, 1980 when the Carrier suspended the Claimant for thirty (30) days.

(b) The Claimant shall be compensated for all wage loss and the discipline removed from his records."

The Claimant, Daniel Alley, entered the Carrier's service on June 16, 1977. On June 24, 1980, the date of the incident giving rise to this claim, he was an EWE Operator working in North Philadelphia. On June 25, 1980, the Carrier notified the Claimant that he was being held out of service in connection with an incident the previous day. By notice also dated June 25, 1980, the Carrier instructed the Claimant to attend a trial on July 8, 1980 in connection with the following charges:

"Alleged violation of Rule C Amtrak Rules of Conduct that part which reads: '. . . the use of alcoholic beverages while on or subject to duty or on company property is prohibited.'

Specification: (a) In that an alcoholic beverage was found in your possession on June 24, 1980 at approximately 3:50 P.M. in the vicinity of #860 Signal on #0 track."

The trial was held as scheduled on July 8, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated July 21, 1980, the Carrier informed the Claimant that it had found him guilty of the charge and assessed him a penalty of thirty (30) days suspension.

The Carrier contends that the record contains sufficient evidence to establish that the Claimant was in possession of alcoholic beverages while working on the Carrier's property and the assessed penalty of 30 days suspension is lenient for the proven offense. The Carrier denies that its handling of this matter has been procedurally defective in any way.

The Claimant acknowledges that a supervisor found alcoholic beverages in his cooler while he was working on the Carrier's property, but claims he has no knowledge as to how they got there. The Organization also raises several procedural defenses on behalf of the Claimant. First, it maintains that the Carrier violated Rule 69 of the agreement between the parties when it took the Claimant out of service. It contends that the Claimant was not a menace or hazard to the Carrier, a finding necessary to justify removing him from service, and the department head did not place him out of service as required by the rule. Secondly, the Organization maintains that the Carrier violated Rule 71 of the Agreement by not giving the Claimant exact notice of the charge upon which he would be tried. The Organization points out that the notice of trial charges the Claimant with "the use of alcoholic beverages," but there was never any evidence that the Claimant had used, or intended to use, the alcoholic beverage found in his cooler.

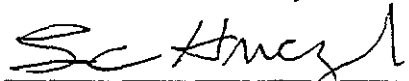
The record establishes that on June 24, 1980, the Claimant was on duty and operating a tie handler for a tie gang working in the vicinity of North Philadelphia, Pennsylvania. While on a routine inspection, Division Engineer McKinley Scott noticed a small cooler between the Claimant's legs. The cooler was later established to belong to the Claimant. Scott asked the Claimant about the contents of the cooler and asked to inspect it. The Claimant was reluctant to let Scott examine the cooler, but

informed him it contained a bottle of soda. The Claimant then removed the soda from the cooler and showed it to Scott. Scott asked the Claimant if he had anything to hide, and the Claimant responded no. The Claimant then left the tie handler and Scott inspected the cooler. It contained four bottles of beer and the soda which the Claimant had previously shown Scott. Scott showed these bottles of beer to several other employees present. Scott then informed the Claimant he would be placed out of service. There was no evidence that the Claimant was under the influence of alcohol.

The record contains sufficient probative evidence for the Carrier to reasonably conclude the the Claimant was in possession of alcoholic beverages on June 24, 1980 while on Carrier property and while on duty. Possession of alcoholic beverages in these circumstances is recognized as violative of the rules of the industrial work place, and this Board has previously held that it is an offense subject of discipline. This Board has also concluded that the Carrier did not make any procedural errors of substance to justify overturning its finding of the Claimant's guilt. The Carrier gave the Claimant adequate and sufficiently specific notice of the offense with which it charged him. The Claimant's evasiveness at the trial shows that he understood the impropriety of his possession. Although the Claimant may not have been a "meance,"-possession and/or use of alcoholic

beverages on the Carrier's property has long been recognized as a major offense justifying removal from service. Accordingly, this claim must be denied.

AWARD: Claim denied.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

March 10, 1984
Philadelphia, PA.