

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

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| NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) | * | CASE NO. 48 |
| -and- | * | |
| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES | * | AWARD NO. 48 |

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 July 23, 1980, by unfairly suspending Claimant, Harold Pinkney, for fifteen (15) days.

(b) The Claimant shall be compensated for the time held out of service."

The Claimant, Harold Leroy Pinkney, entered the Carrier's service on July 20, 1976. On the night of May 30-31, 1980, the date of the incident giving rise to this claim, the Claimant was a machine operator helping to install a panel with a Panel Renewal System Gang, and was working in the vicinity of New Vern Interlocking. By notice dated June 10, 1980, the Carrier instructed the Claimant to attend a trial on June 20, 1980 in connection with the following charge:

"Violation of Amtrak Rules of Conduct, specifically Rules K and L, in that you were found sleeping and not attending to your duties at approximately 12:15 a.m. on May 31, 1980 in the vicinity of New Vern Interlocking."

The trial was rescheduled and held on July 11, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated July 23, 1980, the Carrier informed the Claimant that it had found him guilty as charged and assessed him a penalty of a fifteen (15) day suspension.

The Carrier contends that the trial record contains sufficient evidence to support its finding that the Claimant was away from his work station and sleeping during his working hours. It further asserts that the discipline assessed was not arbitrary, but extremely lenient. The Organization and Claimant acknowledge the Claimant was sleeping when discovered, but contend that he was on his lunch break and that an employee is permitted to sleep


during this break. The Organization also contends that the fifteen day suspension is overly severe for the alleged offense.

The record establishes that on the night of May 30-31, 1980, the Claimant was involved in installing a panel with other employees. During the course of the evening, Michael Simmers, Engineer of the Panel Renewal System, was informed that more operators were needed to perform a task. It was determined that the Claimant and another employee, Harris, were missing. Simmers and Joshua Lepman, General Foreman - Track with PRS, then asked all foremen and general foremen in the preparation area if either missing employee had requested permission to leave. When all replied no, Simmers and Lepman began looking for the missing employees. After searching for approximately 45 minutes they found the Claimant and Harris sleeping in an automobile. Simmers decided not to wake them, and returned to the job site. The Claimant and Harris reappeared approximately 45 minutes later. Simmers told them they were relieved for the remainder of that shift, but were to report to their next assigned shift.


The Claimant testified that at approximately 11:45 P.M. he was instructed by Bill Anderson to eat lunch. He then went to the car to sleep. The Claimant believed he returned from lunch about 12:15 or 12:30 A.M.

This Board has concluded that the record contains sufficient evidence to support the Carrier's charge. Even assuming that the Claimant was on an authorized lunch break and that the Carrier condoned sleeping on that lunch break, neither of which appears to be the fact, the Claimant was away from his designated work place and not attending to his duties for a minimum of 25 minutes. This is in violation of Rule K. This Board has also concluded that the Carrier did not abuse its discretion in assessing the penalty. Accordingly, the claim is 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