

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	CASE NO. 51
	*	
-and-	*	
	*	AWARD NO. 51
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	
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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 21, 1980, by unfairly and unjustly dismissing Claimant Thomas Rhoden in all capacities.

(b) Claimant Rhoden shall be reinstated to service with full seniority and benefit rights unimpaired, and be fully compensated for all wage loss resultant to his dismissal."

The Claimant, Thomas Rhoden, entered the Carrier's service on April 7, 1977. On October 29, 1980, the date of the incident giving rise to this claim, the Claimant was a truck driver who was filling an opening on a zapper machine. By letter dated October 29, 1980, the Carrier removed the Claimant from service. By notice dated November 4, 1980, the Carrier instructed the Claimant to attend a trial scheduled for November 10, 1980 in connection with the following charges:

"Alleged violation of Rule I Amtrak Rules of Conduct that part which reads: 'Employees will not be retained in the service who are insubordinate... quarrelsome...'

Specification: (a) In that you were insubordinate to General Foreman A. Pirelli on October 29, 1980 at approximately 2:00 p.m. in the vicinity of Arsenal Interlocking.

(b) In that you were quarrelsome with General Foreman A. Pirelli on October 29, 1980 at approximately 2:00 p.m. in the vicinity of Arsenal Interlocking.

Alleged violation of Rule J Amtrak Rules of Conduct that part which reads: 'Courteous conduct is required of all employees in their dealing with...each other. Boisterous, profane or vulgar language is forbidden. Violence...threatening...while on duty is prohibited.'

Specification: (a) In that you were discourteous to your General Foreman A. Pirelli on October 29, 1980 at approximately 3:00 p.m. in the vicinity of Arsenal Interlocking.

(b) In that you threatened your General Foreman, A. Pirelli, and addressed him in a boisterous, profane and vulgar manner at approximately 3:00 p.m. in the vicinity of Arsenal Interlocking.

Alleged violation of Rule L Amtrak Rules of Conduct that part which reads: 'Employees shall not sleep while on duty...'

Specification: (a) In that you were observed assuming the position of sleep while on duty at approximately 2:00 p.m. on October 29, 1980 in the vicinity of Arsenal Interlocking."

The Carrier held the trial as scheduled. P. S. Brunone served as hearing officer. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated November 21, 1980, the Carrier informed the Claimant that it had found him guilty as charged and assessed the penalty of immediate dismissal.

The Carrier contends that there is sufficient credible evidence in the record to support its finding that the Claimant was guilty as charged of sleeping while on duty, insubordination and using profane and threatening language towards his supervisor. It asserts that it did not abuse its discretion by choosing to credit General Foreman Pirelli's account of the incident in question, and there exists no evidence that Pirelli had any motive to fabricate the story against the Claimant. The Carrier further contends that the Claimant received a fair and impartial trial, and that discharge is an appropriate penalty.

The Claimant contends that on October 29, 1980 he was not sleeping while on duty and did not act in an insubordinate fashion or use profane language towards Pirelli. The Organization contends that the Carrier should have credited the Claimant's account of the incident, as other employees who testified corroborated the Claimant, and Pirelli was "out to get" the Claimant. The Organization also raises two procedural defenses on behalf of the Claimant. It maintains the Carrier violated Rule 69 when Mr. Rapposelli, and not the department head, took the Claimant

out of service. It further contends the Claimant did not receive a fair and impartial trial, as the Hearing Officer at the trial was the same individual that placed the Claimant out of service.

The record establishes that a direct conflict exists in the testimony of the Claimant and General Foreman Amedeo Pirelli concerning what, if anything, occurred between them on October 29, 1980. According to Pirelli, at approximately 2:00 p.m. he observed the Claimant laying in a reclined position on the zapper machine to which he was assigned. Pirelli believed the Claimant was asleep and instructed him to sit up. Five minutes later Pirelli again told the Claimant to sit up and further instructed him to go to the front of the machine and pick up scrap spikes. The Claimant refused to do so and told Pirelli to "quit f\_\_ing with me." Pirelli repeated his instructions, and the Claimant jumped off the machine and again said "quit f\_\_ing with me." Pirelli again repeated the instructions, which the Claimant did not follow. Pirelli then called up Rapposelli and said he wanted the Claimant placed out of service. Rapposelli told Pirelli there would be a trial concerning the incident and he would get back to him. Pirelli then informed the Claimant there would be a trial. The Claimant then allegedly jumped off the zapper machine and said "I'm gonna f\_\_ing get you. You are f---ing with the wrong guy." Pirelli instructed the Claimant to leave the Carrier's property.

He refused to do so. Pirelli then called Brunone and told him he wanted the Claimant placed out of service for insubordination.

According to the Claimant, on the date of the alleged incident he was not sleeping on the machine, was not insubordinate, did not use threatening or profane language, and did not leave his machine to confront Pirelli. He could not recall any confrontation between himself and Pirelli and testified he did not even speak to Pirelli. The Claimant further testified that he was not instructed by Pirelli to pick up scrap spikes in front of the machine. The Claimant did hear Pirelli talking, but did not believe he was speaking to him.

Two employees who were present during the alleged confrontation also testified at the trial. Both recognized that there was some type of disturbance concerning Pirelli and the Claimant, but neither could hear the content of what was said. Neither employee observed the Claimant getting off the machine and confronting Pirelli.

This Board has concluded that the record contains sufficient probative evidence to support the Carrier's finding that the Claimant was guilty as charged. The Carrier did not abuse its discretion in choosing to credit Pirelli's account of the incident. The two employees who observed the incident did not directly corroborate the Claimant, and there exists no evidence that Pirelli was "out to get" the Claimant. Pirelli's testimony

establishes significant and flagrant violations of the Carrier's rules. This Board has further concluded that the Claimant received a fair and impartial trial. Pirelli personally decided that the Claimant should be disciplined. Rapposelli took the Claimant out of service. Brunone's only apparent involvement in the incident was that Pirelli reported to him the Claimant's alleged insubordination. Brunone could therefore properly and without bias conduct the hearing. This Board has also concluded that the Carrier did not abuse its discretion by discharging the Claimant. Accordingly, the claim is denied.

AWARD: Claim denied.

  
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L. C. Hriczak, Carrier Member

  
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W. E. LaRue, Organization Member

  
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Richard R. Kasher, Chairman  
and Neutral Member

March 10, 1984  
Philadelphia, PA