

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	CASE NO. 52
-and-	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 52
	*	

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 30, 1980, by unfairly suspending the Claimant, Guy Mickles, for ten (10) calendar days.

(b) The Claimant shall now be compensated for the ten (10) day suspension."

The Claimant, Guy Mickles, entered the Carrier's service on July 13, 1977. On June 6, 1980, the date of the incident giving rise to this claim, the Claimant was a machine operator working with the Panel Renewal System at Metuchen, New Jersey. On June 6, 1980, the Carrier gave the Claimant a notice removing him from service effective immediately. 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 C and I, in that you were found to be under the influence of alcohol at approximately 10:00 p.m. on Friday, June 6, 1980, in the vicinity of Metuchen Station at Lincoln Interlocking."

The trial was held as scheduled on June 20, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated June 20, 1980, the Carrier informed the Claimant that it had found him guilty as charged and assessed him a penalty of ten (10) days suspension.

The Carrier maintains that the record contains substantial evidence to warrant its finding that the Claimant was under the influence of alcohol while working, and the Claimant eliminated the opportunity to prove his innocence by failing to remain on the Carrier's premises to take a blood alcohol test. The Organization contends that the Claimant was not under the


influence of alcohol, the opinion of the supervisor who determined that he was under the influence is not corroborated, and the Claimant offered to take a blood test immediately after being accused to prove his innocence but the Carrier neglected to administer the test.

The record establishes that on the night of June 6, 1980 the Claimant was working in a public area of the Metuchen Station Platform. J. M. Lepman, General Foreman, testified that he observed certain behavior of the Claimant that indicated he was under the influence of alcohol. According to Lepman, the Claimant's coordination was impaired, he was slow in carrying out work instructions, and his breath smelled of alcohol. J. M. Mancini, Supervisor for PRS, told Lepman he concurred in his judgment that the Claimant was under the influence of alcohol. At approximately 10:00 p.m., Lepman gave the Claimant an assignment to move some tie plates and an argument ensued between them. Lepman then removed the Claimant from service and gave him an out of service notice. Lepman subsequently offered the Claimant the opportunity to go with Amtrak police to take a blood test. The police arrived approximately 30-45 minutes later, but the Claimant had already left the Carrier's premises. Lepman did not allege that he or anyone else observed the Claimant using alcohol.

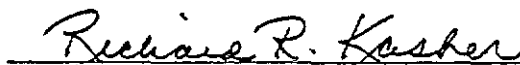
According to the Claimant, he was not under the influence of alcohol on the day in question, and did not refuse to do any assignment. The Claimant asserts that he volunteered to take a blood test, but left the Carrier's premises after waiting 30 to 50 minutes and no one showed up to administer the test.

This Board has concluded that the record contains sufficient probative evidence to support the Carrier's charge. The Carrier did not abuse its discretion in relying upon Lepman's testimony concerning the Claimant's state of intoxication. Being under the influence of alcohol while on duty is a clear violation of the Carrier's rules. Although a blood test might have exonerated the Claimant, he personally chose not to wait the necessary amount of time to have one administered. This Board has further concluded that the Carrier did not abuse its discretion by suspending the Claimant for ten (10) days. 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