

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)
-and-
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 61
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* Award No. 61
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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 Employes (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:

"All references to the charges be expunged from Ernest L. Tancemore's personnel record, and he be compensated for all wages lost resultant to discipline imposed."

The Claimant, Ernest L. Tancemore, entered the Carrier's service on July 25, 1977. On July 17, 1980 he was assigned the awarded position of a Clipping Machine Operator, Gang Y-152, working in the Carrier's Track Laying System (TLS) which at the time was camped at Havre de Grace, Maryland. On July 17, 1980 the Claimant was notified in writing that

he was removed from service in connection with an incident involving his alleged refusal of a direct order given by Project Engineer Broughman on that date. By notice dated July 28, 1980 the Claimant was notified to attend a trial on August 15, 1980 regarding the following charges:

"That you did refuse a direct order by Project Engineer, John Broughman, at approximately 9:00 a.m. near MP 36.5 on #4 track on July 17, 1980 to perform quality control work behind the clipping gang Y-152, your actions being in violation of Rule I of the National Railroad Passenger Corporation's Rules of Conduct which states in part: '... I. Employees will not be retained in service who are insubordinate ...' and Rule K which reads in part 'K. Employees must ... comply with instruction from their supervisor' and that you left the jobsite without permission at approximately 9:00 a.m. near MP 36.5 on July 17, 1980 and boarded the gang bus without being released from the jobsite or without proper authorization, your actions being in violation of General Rule K of the NRPC's Rules of Conduct which reads in part 'K. Employees must report for duty at designated time and place, attend to their duties during the hours prescribed' and Rule L which reads in part '... Employees shall not ... be absent from duty ... without proper authority."

By letter dated July 28, 1980 the Claimant was notified he could return to work on July 30, 1980 pending investigation, as the result of an agreement between his duly authorized representative and the Trial Officer. The investigation scheduled for July 28, 1980 was postponed and was held on August 20, 1980 with both the Claimant and his representative present. The Claimant was found guilty and was assessed with a fourteen (14) day suspension with his time held out of service to apply to the suspension.

The Claimant was charged with refusing to obey a direct order of Project Engineer J. Broughman at approximately 9:00 a.m. on July 17, 1980. The order allegedly required that he perform quality control work behind the clipping gang. He was alleged to have violated Rules "I" and "K" of the Carrier's Rules of Conduct and to have left the jobsite without permission in violation of Rules "K" and "L".

Foreman Isaiah Samuel testified that on July 17, 1980, while on the bus, he heard Claimant Tancemore state that he had had a meeting with a union representative the night before and that the union representative stated that he, the Claimant, was not supposed to be doing any trackman's work while a trackman was doing operator's work. Mr. Samuel stated that he then told the Claimant to go up front and operate the rail puller and he took the trackman who had been assigned by Mr. Broughman to operate the rail puller and put him on trackman's work. Mr. Samuel testified that the machine to which the Claimant had been assigned by award was not operable and was in tow. Mr Samuel further testified that when he told Mr. Broughman what he had done Mr. Broughman told Mr. Samuel to remove the Claimant from the rail puller and put him back on quality control (trackman's work). Mr. Samuel testified that he heard Mr. Broughman instruct the Claimant to perform quality control/trackman work.

Project Engineer Broughman testified that he asked the

Claimant what problems he had regarding the work assigned to him and the Claimant stated " ... if he had to do this work that he was going to leave the job and he would not work in that capacity". Mr. Broughman testified further that he then instructed the Claimant to return to the back of the clip gang and do the quality control work that had been assigned to him and the Claimant then answered that " ... he was not going to do the work" and that he turned and left the track. Mr. Broughman further testified that the Claimant then boarded the gang bus.

The Claimant, in his statement at the investigation, admitted that Mr. Broughman instructed him to perform the quality control work and that, when he questioned Mr. Broughman's instructions, Mr. Broughman told him to either do the quality control work or go out of service. The Claimant admitted that he left the job, although he stated that it was because he was held out of service rather than leaving his assignment.

The testimony of Project Engineer Broughman, corroborated in pertinent part by the testimony of Foreman Samuel, establishes that the Claimant refused a direct order from Project Engineer Broughman to perform quality control work and that he left his assignment. Additionally, the Claimant admitted he did not comply with the instructions of Project Engineer Broughman and that he left his assignment.

Rule "I" provides in pertinent part "Employees will not be retained in service who are insubordinate ...".

Rule "K" provides in pertinent part "Employees must ... comply with instructions from their supervisor" and "Employees must report for duty at designated time and place, attend to their duties during the hours prescribed ..." and Rule "L" provides in pertinent part " ... Employees shall not ... be absent from duty ... without proper authority".

There was substantial evidence produced in the investigation to establish, without question, that the Claimant violated each of the above rules.

The Organization contends, as bases for its position that the discipline should be removed, that the burden of proof rests with the Carrier to prove beyond a question of doubt that the Claimant was guilty as charged; that the Claimant was assigned to the rail puller by Foreman Samuel and the assignment was changed to quality control by Project Engineer Broughman; that the offense was not sufficiently serious to warrant the Claimant's being held out of service; and, that the discipline assessed was unreasonable and an abuse of discretion.

Regarding the Organization's contention that the Carrier did not prove beyond a question of a doubt that the Claimant was guilty as charged, this Board finds that in discipline

cases in the rail industry it is not necessary for the Carrier to prove guilt beyond a question of doubt or beyond a reasonable doubt. In this case there is substantial evidence of probative value to establish the Claimant's guilt of the charges. In fact, the Claimant admitted that he did not carry out the instructions of Project Engineer Broughman.

The Organization also contends, as a basis for its argument that the discipline should be removed, that the Claimant was assigned to the rail puller by Foreman Samuel and that the assignment was changed to quality control by Project Engineer Broughman. Regardless of any change in assignments, the Claimant, as an employee, had an obligation to carry out the instructions of Project Engineer Broughman. If the Claimant was of the opinion that the assignment given him by Mr. Broughman was, in any manner, violative of agreement rules he had the right to file a grievance. He had no right to refuse to comply with Mr. Broughman's instructions. The doctrine of "Obey now, grieve later" is too well-established to warrant being discussed further by this Board.

The Organization also contends that the offense was not sufficiently serious to justify the Claimant's being held out of service. The Claimant was charged with refusing a direct order of Project Engineer Broughman and with viola-

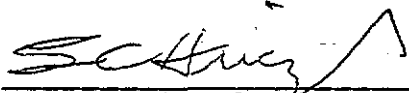
tion of Rules "I" and "K" which deal with insubordination and with leaving the job without permission. The Claimant refused a direct order of Project Engineer Broughman. This is alleged in the testimony of Mr. Broughman, corroborated by the testimony of Foreman Samuel, and confirmed by the Claimant's admission of his failure to carry out the instructions of Mr. Broughman. The same testimony establishes that the Claimant walked off the job. Withholding the Claimant from service under such circumstances was not improper or arbitrary. The Carrier should not be asked to keep such an individual in service and risk a reoccurrence of insubordination.

The Organization further contends that the discipline assessed, a fourteen (14) day suspension, was unreasonable and an abuse of the Carrier's discretion. This Board does not agree. As discussed above, the evidence establishes that the Claimant refused to comply with a direct order of Project Engineer Broughman. The evidence also establishes that the Claimant left the job without authority. The Claimant contends he left the job because he had been removed from service by Mr. Broughman. However, in the trial the Claimant states "He instructed me to do that or get out of service". Thus by his own admission the Claimant chose to "go out of service" rather than comply with instructions. Insubordination and leaving one's assignment


are both serious offenses which frequently result in dismissal. A fourteen (14) day suspension under the circumstances here is neither unreasonable nor an abuse of discretion.

The Board finds that the Claimant's guilt of the charges was established by the evidence produced at the investigation, that the charges were serious, and that the discipline assessed was neither arbitrary or unreasonable. Accordingly the claim will be denied.

AWARD: Claim denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member

Dissent



Richard R. Kasher,
Chairman and Neutral Member

February 28, 1985
Philadelphia, PA