

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. 62
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* Award No. 62
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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:

"Claimant Ernest Tancemore's record be cleared of charges brought against him on January 9, 1981, and Claimant Tancemore be restored to service, with seniority and all other rights unimpaired, and he be compensated for losses sustained, as provided in Rule 74 of the effective agreement."

The Claimant, Ernest L. Tancemore, entered the Carrier's service on July 25, 1977. On January 19, 1981 he was assigned to the position of Machine Operator working at the Odenton, Maryland Maintenance of Way Base on the Carrier's

Baltimore Division. By notice dated January 23, 1981 the Claimant was notified to attend an investigation on February 5, 1981 at 9:30 a.m. regarding the following charges:

"Violation of NRPC General Rules of Conduct, Rule I reading in part: 'Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome ...'

Specification - In that on January 19, 1981 at approximately 2:15 p.m. at Odenton M.W. Panel building area you were insubordinate to Walter Reed, General Car Foreman Track."

The Claimant did not appear for the investigation at 9:30 a.m. on February 5, 1981 and, after delaying the start of the hearing for an hour awaiting his arrival and after ascertaining that the Claimant had not contacted either the Carrier or the Organization representative to request a postponement, the Hearing Officer conducted the investigation in the absence of the Claimant. The Claimant's duly authorized representative was present throughout the investigation. The Claimant was found guilty as charged and was dismissed from the service by letter dated February 17, 1981 which found merit in the charges and specification.

General Foreman Reed testified that on January 19, 1981 at approximately 2:15 p.m. the Claimant approached him and asked if he could be sent to a Book of Rules class in order to become qualified. Mr. Reed testified that he told the Claimant he could not do it but that he would talk to Brad Albert (Production Engineer) and see if proper arrangements

could be made. Mr. Reed testified that this did not satisfy the Claimant; that the Claimant became loud and belligerent and used foul language; and, argued for 10 or 15 minutes that Mr. Reed could send him to the Book of Rules School but that he was not sending him because Mr. Reed was prejudiced. Mr. Reed testified that he told the Claimant that he had had enough and that he ordered the Claimant to go back to work. Further, by the testimony of Mr. Reed, the Claimant continued to holler for about 10 minutes. Mr. Reed testified that Foreman Dennis Griffin arrived on the scene and that the Claimant said something to him. General Foreman Reed stated that he rolled his window down and asked the Claimant if he was going back to work. Mr. Reed stated that the Claimant started cursing and hollering again, stated he was doing his job and "If I didn't leave him alone he was going to break my back".

Track Foreman Dennis Griffin testified that when he went to speak to General Foreman Reed that the Claimant approached him and stated that he would like to formulate a protest and he wanted Messrs. Griffin and Reed's signatures attesting to the fact that he was denied the right to go to the Book of Rules class. Mr. Griffin testified that the Claimant repeatedly used profanity and said that he was going to do bodily harm to Mr. Reed.

Foreman Griffin further testified that he heard Mr. Reed

order the Claimant to go back to work and that the Claimant did not comply. Mr. Griffin testified that he heard the Claimant threaten Mr. Reed and he heard the Claimant direct profanity toward Mr. Reed and become quarrelsome with Mr. Reed.

The testimony of General Foreman Reed and Foreman Griffin abundantly establishes that the Claimant was insubordinate to General Foreman Reed and that he violated Rules "I" and "J".

Regarding the discipline assessed, insubordination is a most serious offense and in itself merits severe discipline. The service record of the Claimant shows that he has been disciplined on five (5) previous occasions for violation of Carrier Rules of Conduct. The Claimant's service record is atrocious, particularly in view of his brief tenure of 3½ years. In view of the fact that the evidence clearly and conclusively established the Claimant's guilt of insubordination, dismissal is commensurate with the seriousness of the offense and the Claimant's extremely poor past service record.

The Organization contends, as bases for its position that the discipline should be removed, that holding the investigation "in absentia" was improper; that the Carrier failed to present probative evidence to support the charges; and, that the Claimant was not insubordinate, because he

returned to work when told and he did not direct profanity at General Foreman Reed.

In addressing the contention that holding the investigation "in absentia" was improper, the Board finds that the "Notice of Hearing" was sent to and received at the Claimant's home address. The Claimant did not appear for the investigation and the Trial Officer delayed commencing the hearing for an hour awaiting the Claimant's appearance. The Claimant's representative was present. It was developed in the investigation that neither the Carrier nor the Organization had been contacted by the Claimant with a request for a postponement. Additionally, the Claimant's representative could offer no reason for the Claimant's failure to appear. The holding of the investigation "in absentia" under the above circumstances was not improper and does not constitute a denial of procedural due process or a valid reason for removing the discipline.

The contention that the Carrier did not present probative evidence to support the charges is not substantiated by the record. The testimony of General Foreman Reed, corroborated in great detail by the testimony of Foreman Griffin, constitutes sufficient evidence of probative value to support the charge.

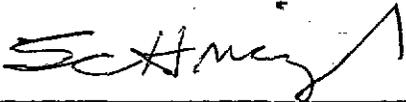
The Organization contends that the Claimant was not insubordinate because he returned to work when told to do so

and because he did not direct profanity at General Foreman Reed. The testimony of both General Foreman Reed and Foreman Griffin establishes that while the Claimant eventually returned to work, he did not return to work when instructed to do so. Mr. Reed's testimony shows that he told the Claimant to go back to work; that the Claimant hollered for another 10 minutes; that when Mr. Reed again asked him if he was going to return to work, the Claimant continued hollering and cursing; and that the belligerent conduct culminated in the threat "If I (Reed) didn't leave him alone he was going to break my back". Mr. Reed's testimony that it took some time for the Claimant to return to work is corroborated by the testimony of Foreman Griffin.

The contention of the Organization that the Claimant did not swear at General Foreman Reed is not supported by the evidence. Certainly the testimony of General Foreman Reed corroborated by the testimony of Foreman Griffin develops that the Claimant, after approaching Mr. Reed, was using frequent and extreme profanity directed at supervision. The evidence shows that the Claimant persisted in his conduct and his tirade finally culminated in the threat to Mr. Reed. The Claimant approached Mr. Reed and initiated the conversation. His remarks were directed to Mr. Reed; and, most certainly, his remarks, the threat and his delay in returning to work constituted extreme insubordination.

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

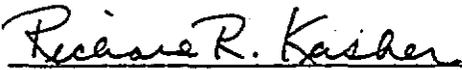
AWARD: Claim denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher,
Chairman and Neutral Member

February 28, 1985
Philadelphia, PA