

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 63
AWARD NO. 63

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 Section 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 May 13, 1981, by unfairly and unjustly dismissing Claimant Julius Robinson.
- (b) Claimant Robinson shall be reinstated to service with seniority unimpaired."

Mr. J. Robinson, Claimant, was employed by Amtrak on September 1, 1978, as a Trackman on the Baltimore Division. At

the time of the incident here involved Claimant had been promoted to Maintenance of Way Repairman and was working as such.

By letter dated April 27, 1981, mailed to Claimant Certified Mail No. P156171104, the Claimant was notified to attend a trial on May 4, 1981, in connection with the following charge:

"Violation of Amtrak Rules of Conduct Rule 'I' which reads in part...Employees will not be retained in the service who are insubordinate...quarrelsome or otherwise vicious...

In that on April 7, 1981 at about 11:00 p.m. in the vicinity of wreck train siding at Wilmington Car Maintenance Facility you were insubordinate and threatening to your General Foreman M. Scott, when he instructed you to turn over your company vehicle keys to him."

Although notified of his trial, Claimant did not appear. Claimant's duly authorized representative did appear and the trial proceeded in absentia. The Claimant was notified by Notice of Discipline dated May 13, 1981, that he was assessed the discipline of "immediate dismissal, effective immediately".

The Claimant appealed this matter which has been progressed through the highest officer of the Carrier designated to handle such matters.

The record reflects that the Carrier made adequate efforts to effect proper delivery of the Notice of Investigation to the Claimant at his address of record on file with the Carrier. Apparently, the Carrier was not able to effect the Claimant's

attendance at this trial. Even absent the return of a signed certified receipt, constructive notice was given and the Carrier could properly conduct the trial/investigation in absentia.

The record before this Board contains substantial and overwhelming evidence to support the Carrier's conclusion that on April 7, 1981, the Claimant threatened General Foreman Scott with a three to four foot hammer handle, and refused to relinquish the keys to a Carrier vehicle which he had driven recklessly and dangerously.

The evidence indicates that the Claimant was in a state of extreme agitation, apparently as the result of his having received letters or notices from the Carrier concerning his alleged unauthorized absenteeism. The Claimant's response was to verbally abuse and physically threaten the General Foreman. Such actions are clearly grievous and the Carrier had good and just cause to impose discipline as a result of the Claimant's behavior.

Implications in the record regarding the Claimant's alleged lateness and/or intoxication have been disregarded by this Board. Additionally, this Board has not based its decision to sustain the Carrier's discharge of the Claimant on any elements in his past disciplinary record. The offenses committed on April 7, 1981, were established by substantial probative evidence; and those offenses standing alone could be properly

viewed by the Carrier as justifying the Claimant's dismissal from service.

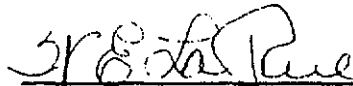
The Claimant was given more than adequate opportunity in the Trainmaster's office to comply with the request to relinquish the keys to the Carrier vehicle. His adamant refusals were confirmed by the testimony of the Carrier's Police Department eyewitness observer.

There is, accordingly, no element in the record which can be arguably mitigating and therefore the claim will be denied.

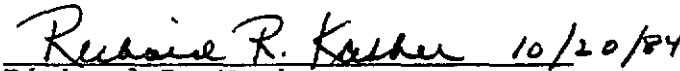
AWARD: CLAIM DENIED



L. C. Hriczak
Carrier Member



W. E. LaRue
Organization Member



Richard R. Kasher
Chairman and Neutral Member

September 28, 1984
Philadelphia, PA