

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
-and-	*	CASE NO. 66
	*	AWARD NO. 66
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	
	*	

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 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 October 13, 1980, by unfairly improperly, and without just cause suspending Claimant Roger Corbitt for Forty-five (45) days.
- (b) Claimant Corbitt now be compensated for any wage loss suffered on account of this suspension and the matter be expunged from his record."

Mr. R. B. Corbitt, hereinafter referred to as Claimant, entered the Carrier's service on February 13, 1976, as a Plumber's Helper on the Carrier's Philadelphia Division. At the time of the incident here involved he was working as a Plumber on the Philadelphia Division.

By letter dated September 2, 1980, the Claimant was notified to attend a trial in connection with the following charges:

"Alleged violation of Rule K Amtrak Rules of Conduct that part which reads 'Employees must ... attend to their duties during the hours prescribed ...

Specification

(a) In that you were observed not attending your duties as a plumber on August 29, 1980 at approximately 1:05 p.m. in the vicinity of 42nd St. Bridge.

Alleged violation of Rule L Amtrak Rules of Conduct that part which reads: 'Employees shall not sleep while on duty ... without proper authority.

Specification

(a) In that you were observed assuming a position of sleep on August 29, 1980 at approximately 1:05 p.m. in the vicinity of 42nd St. Bridge."

By letter dated September 23, 1980, the trial was rescheduled for September 30, 1980.

The trial was held on September 30, 1980, as rescheduled. The Claimant and his duly authorized representative were present, indicated a willingness to proceed, and were permitted to present evidence on behalf of Claimant and cross-examine Carrier witnesses.

Based upon evidence adduced at the trial, the Claimant was notified by letter dated October 13, 1980, that he was assessed the discipline of 45 days suspension.

By letter dated October 13, 1980, Claimant appealed the discipline assessed him to the Assistant Chief Engineer.

The appeal was progressed through the highest officer of the Carrier designated to handle such disputes on the Carrier's property.

The Claimant's forty five (45) day suspension was premised upon two alleged Rules' violations; (1) observed not attending to duties (Rule K), and (2) assuming a position of sleep (Rule L).

The evidence of record establishes that the Claimant was at his assigned job site, apparently on time, and waiting for the track gang to arrive. Whether he was sitting, reclining or lying down in his truck at the time, there is no probative evidence in the record which would establish that the Claimant "was not attending to his duties". He was the plumber assigned to pump water out of the pipe trench which the track gang would be digging. By waiting for the gang's arrival at the assigned time and place the Claimant is not shown to have been derelict in his responsibilities.

There is also insufficient evidence in the record to establish that the Claimant was assuming a position "of sleep". Implicit in this charge is the contention that the Claimant was sleeping and/or in a sleep-type condition and not attending to or prepared to attend to duty. The Carrier's evidence does not support such a conclusion. Even if we assume that the Claimant was reclining or lying across the seat of his truck with his feet sticking out of the cab window, those facts alone do not establish, in the circumstances, that he had not attended to his duties. He was not responsible for the non-arrival of the track gang and we cannot assume, as the Carrier has presumed, that the Claimant would have "goofed off" the entire day had not supervision arrived and found him in his vehicle.

The Claimant was not sleeping; he was awake and alert when supervision approached; his truck and his person were in open view; and there is no evidence that he was attempting to secret himself or steal time from the Carrier.

Given all of the above, the Carrier did not have sufficient cause to discipline the Claimant and this claim will be sustained.

AWARD: CLAIM SUSTAINED

The notice of discipline shall be expunged from the Claimant's record upon the receipt of this award, and the

Claimant shall be compensated for all wages lost as a result of his improper suspension within fifteen (15) days of the receipt of this award.

SC Hriczak (DISSENTING)

L. C. Hriczak
Carrier Member

W. E. LaRue

W. E. LaRue
Organization Member

THE CLAIMANT ADMITTED HE WAS LYING ACROSS THE SEAT OF A CARRIER VEHICLE, WITH HIS FEET EXTENDING OUT OF THAT VEHICLE, READING A NEWSPAPER.

WHETHER OR NOT IT HAS BEEN SHOWN THAT HE HAD ANY SPECIFIC DUTY TO PERFORM AT THAT TIME, SUCH CONDUCT CANNOT BE CONSIDERED IN COMPLIANCE WITH GENERALLY ACCEPTED NORMS IN THE WORK PLACE, MUCH LESS CARRIER'S RULES OF CONDUCT.

Richard R. Kasher 10/22/84
Richard R. Kasher
Chairman and Neutral Member

September 28, 1984
Philadelphia, PA