

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
-and-	*	CASE NO. 67
	*	AWARD NO. 67
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	
	*	

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 September 4, 1980 by arbitrarily and capriciously disqualifying Claimant Thomas Sills as Engineer Work Equipment.
- (b) The Claimant shall be reinstated as Engineer Work Equipment, compensated for all wage loss and the matter be expunged from his record."

Mr. T. Sills, hereinafter referred to as Claimant, was employed by Amtrak on October 19, 1978. At the time of the incident here involved he was working as an Engineer Work Equipment "C" on the Track Laying System which at that time was in the vicinity of Edgewood, Maryland.

By letter dated August 4, 1980, Claimant was directed to report for a trial to be held August 22, 1980, on the below quoted charge:

"Violation N.R.P.C. General Rule Y, reading in part: Employees must obey instructions from their supervisor in matters pertaining to their respective branch of the service...

Violation of N.R.P.C. General Rule F, reading in part: Safety is of first importance in the discharge of duty and in case of doubt or uncertainty, the safe course must be taken. Employees will not be retained in the service who are careless of the safety of themselves or others.

Violation N.R.P.C. General Rule H, reading in part: Employees must take every precaution to guard against loss and damage to the Company property from any cause.

On July 22, 1980, in the vicinity of Edgewood, Maryland, you had not obtained proper authority prior to fouling #3 track at approximately 11:25 a.m. with section of the ballast regulator, for which you were operator, although you had been previously so instructed. Furthermore, you had neither taken the safe course of action nor had you taken every precaution to guard against loss and damage to Company property when, with section of the ballast regulator, for which you were operator, you fouled #3 track in the vicinity of Edgewood, Maryland, at approximately 11:25 a.m. although you had not first received proper authority; the effect of which was that train #105 struck a section of the ballast regulator for which you were operator, resulting in damage to Company property."

After the above-referenced accident Claimant had been held out of service effective July 22, 1980. Claimant was subsequently directed to return to service with restriction to Trackman duties on August 6, 1980.

The trial was held as originally scheduled. Claimant was present and represented by a duly accredited representative of his Organization. Claimant and his representative participated in the trial and were allowed to present evidence and cross-examine Carrier witnesses on behalf of the Claimant.

Claimant was notified by letter dated September 4, 1980, that he was assessed the discipline of "immediate disqualification as Engineer Work Equipment".

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

The record establishes that at the time of the incident the Claimant, although he was operating a Ballast Regulator under proper assignment, was not "formally" qualified to operate this type of equipment as he did not possess a qualification card as a Ballast Regulator Operator. The record also establishes that the Claimant had operated the Ballast Regulator on 6 or 7 previous occasions and that approximately five (5) weeks prior to the incident in question he was issued a written reprimand for his alleged failure to safely and prudently operate the Ballast Regulator.

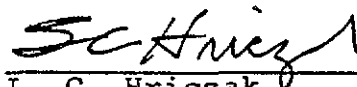
Although there is contradictory evidence in the record regarding the question of whether the Claimant had received clear verbal instructions concerning his obligation to obtain fouling time prior to raising or lowering the arms of the Ballast Regulator, that question, in this Board's view, is not critical to our ultimate determination.

Even if the Claimant was negligent, to a degree, as a Ballast Regulator Operator, we find that the Carrier's disqualification of the Claimant from all positions as an equipment operator for which he was qualified was improper in the unique circumstances of this case. The Carrier's effort to certify the Claimant as a qualified Ballast Regulator Operator after his alleged responsibility for damage to that equipment on July 22, 1980, raises serious questions of motivation which need not be addressed. It is sufficient to find that the Carrier would have been, and still may be, entitled to withhold qualifying the Claimant as a Ballast Regulator Operator. However, the Claimant did not commit any infraction which would justify the Carrier's disqualifying him from operating equipment which he had previously held qualifications to perform. His failure to competently perform during his "on the job training" as a Ballast Regulator Operator cannot result in a finding, per se, that his other qualifications were now deficient and subject to revocation.

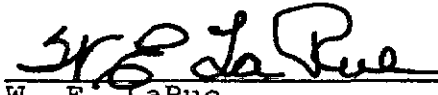
Accordingly, the claim will be sustained.

AWARD: CLAIM SUSTAINED

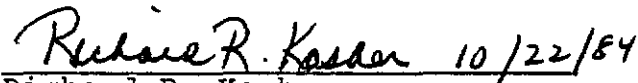
The Carrier is directed to restore the Claimant's previously held qualifications and to compensate him for the difference in rates he would have been entitled to had the disqualification not been imposed.



L. C. Hriczak
Carrier Member



W. E. LaRue
Organization Member



Richard R. Kasher
Chairman and Neutral Member

September 28, 1984
Philadelphia, PA