

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 3038

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 1
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 1
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Public Law Board No. 3038 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:

- "1. The Carrier has violated the current Schedule Agreement, as amended, when dismissing Trackman Robert Sferrazza, for violating Rules I and J of the National Railroad Passenger Corporation Rules of Conduct.
2. The dismissal being arbitrary and capricious and based on unsupported facts, the Claimant, Robert Sferrazza, should now be returned to service without loss of seniority rights, vacation rights and all those privileges he enjoyed prior to his dismissal.
3. The Claimant should now be compensated for all wages lost due to Carrier's abuse of its disciplinary prerogative."

Claimant Robert Sferrazza entered the Carrier's service on August 15, 1977. On June 4, 1980, Claimant was employed as a Trackman at the Carrier's South Bay Yard. The record indicates that due to an incident that occurred on the morning of June 4, 1980, Claimant was removed from service at 7:15 a.m. on that date. By letter dated June 5, 1980, Claimant was notified to attend a trial on June 13, 1980, in connection with his alleged violation of Rules I and J of the Carrier's Rules of Conduct. This trial was postponed by mutual agreement of the Carrier and the Organization, rescheduled, and held on June 18, 1980. The Claimant was present at the trial and was accompanied by a duly designated representative of the Organization. By letter dated June 30, 1980, Claimant was notified that based on the evidence adduced at his trial, and his past work record, he was dismissed from the service of the Carrier, effective that date.

Rules I and J read as follows:

- "I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, and who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of goodwill."
- "J. Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, horse-play, threatening or interfering with other employees or while on duty is prohibited."

The Organization takes the position that the notice of trial sent to Claimant did not meet the standard required by Rule 71(a)

which provides that "/a/n employe who is...directed to report for a trial...shall be given reasonable advance notice in writing of the exact charge on which he is to be tried..." (Emphasis added.)

Instead, Claimant was merely notified that he was alleged to have violated Rules I and J without any specificity as to the alleged violation.

This Board agrees with the Organization that the notice was indeed deficient, but under the circumstances of this case, the Carrier's error is less than fatal. The record clearly indicates that the Claimant and his representative were aware of the matter to be covered at the trial and were well prepared to defend Claimant's interests. Nevertheless, the Carrier should take care that future notices of trial provide specific notice of alleged violations along with recitations of pertinent rules.

Concerning the merits of the claim, there is ample testimony from foremen and fellow employes of Claimant, that Claimant left the property after he had been denied permission to do so, that he returned shortly and was abusive and threatening to his foreman and fellow employes, and that he pushed his foreman and challenged him to fight. In this Board's view, the Carrier has proven violation of Rules I and J by the weight of substantial evidence. The decision to dismiss Claimant is not arbitrary or unwarranted given his offense and his past service record.

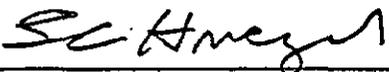
One further point needs to be considered. At the trial there was evidence that Claimant was under the influence of alcohol at the time of the incident. The transcript shows him stating that

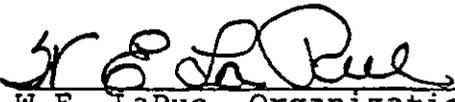
he had a drinking problem, but was not at that time in a counseling program. In a statement made to this Board, Claimant asserted that he has since completed the Employee Assistance Program and has been off alcohol for sixteen months. Taking this into consideration, it is the decision of this Board that Claimant should be restored to service with his seniority unimpaired, but without back pay, if:

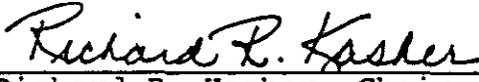
(a) he can demonstrate to the Carrier that he has overcome, or has under control, his problem with alcohol, and

(b) he can meet any other standard requirements of the Carrier for reemployment.

AWARD: Claim denied.

  
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L. C. Hriczak, Carrier Member

  
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W.E. LaRue, Organization Member

  
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Richard R. Kasher, Chairman  
and Neutral Member

June 1, 1982  
Philadelphia, PA.