

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD CORPORATION (AMTRAK)
-and-
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 6
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* Award No. 6
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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 Employees (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:

"It is requested that you review this file at your early convenience and rescind the discipline assessed Bryant Gibson."

The Claimant, Bryant Gibson, entered the Carrier's service on January 2, 1979. On February 23, 1981 the Claimant was holding the position of Machine Operator at the Rail Welding Plant, New Haven, Connecticut. By notice dated February 24, 1981 the Claimant was notified to attend an investigation regarding the following charge:

"This notice is issued in connection with the charge in that on February 23, 1981, at approximately 1:15 p.m., you allegedly failed to obey the instructions of your supervisor, to properly adjust the top leading shear tool, which resulted in extensive damage to company property and created a safety hazard to employees, when you were on duty as a machine operator."

The investigation began as scheduled on March 11, 1981, was recessed, and reconvened on April 21, 1981, after three mutually agreed-upon postponements. The Claimant and his duly designated representative were present throughout the hearing. The Claimant was charged with failure, while on duty as a machine operator, to obey the instructions of his supervisor to properly adjust the top leading shear tool which resulted in extensive damage to Carrier property and created a safety hazard to employees.

It was the position of the Carrier that the evidence adduced at the hearing supported the finding of guilt and the discipline assessed was warranted and commensurate with the offense.

Engineer-Maintenance L. G. Woolner testified that on February 23, 1981, at about 1:15 p.m., he instructed Claimant Bryant "to properly adjust the top leading shear tool before the end of the production shift" and that the Claimant acknowledged his instructions. Mr. Woolner further testified that at 1:30 p.m. Mr. Angiletta, the Welder Operator, informed him that there was damage to the shear. Mr. Woolner stated that he questioned the Claimant regarding

what had happened and that the Claimant replied that he had adjusted the top shear and was checking it. Mr. Woolner stated that he noticed that the top door was open and asked the Claimant if he had noticed the open door (which was the cause of the damage) and that the Claimant replied "no".

Mr. Woolner testified that the Claimant carried out his instructions but did so improperly. Mr. Woolner also testified that the Claimant had received verbal instructions, as well as hands-on instructions from Welding Foreman Hall, regarding the operation of the shear machine but that the Claimant had never attended any classes regarding the operation of the shear machine.

The Carrier presented Welder Operator Angiletta as a witness. He stated that he had no information regarding the charges against the Claimant. He did, however, testify regarding the repairs he made.

The Carrier also presented Rail Welding Foreman Hall as a witness. He testified that he had no information regarding the charges against Claimant Gibson, but he testified regarding repairs which were made.

The Claimant testified that he was operating the shear machine on the instructions of Mr. Woolner. He also testified that the guard for the shear machine die was not in an up position. He further testified that he had never adjusted the dies before and while he was doing so Foreman

Hall walked by. The Claimant stated that at the time the rail was not running through the shear and Foreman Hall told him he had to wait for the rail to come through before he adjusted the dies. Claimant Gibson further testified that Engineer-Maintenance Woolner first instructed him to adjust the top die, then came back and told him to wait until the next day at the beginning of the next work shift. Then, according to the Claimant, Mr. Woolner came back again, after they finished working, and told him to adjust the die again.

The Claimant also testified that the job he occupied by bid was the "Grinder" position and that he had never bid on the position of "Stripper Operator" for the shear machine. The Claimant also testified that prior to February 23, 1981 he had never been given any special instructions in the operation of the Stripper machine.

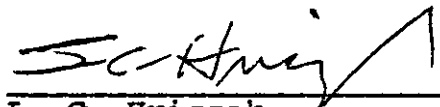
The Board, after carefully reviewing the transcript of the investigation and the positions of the parties' finds that the Carrier failed to present sufficient probative evidence of rules violation. The evidence shows that the Claimant was not qualified as a Stripper Operator, and had never bid the job. While Engineer-Maintenance Woolner stated that the Claimant had received verbal instructions as well as "hands-on" instruction in the operation of the shear machine from Foreman Hall, Mr. Hall, who testified at

the investigation, made no statement to this effect. Mr. Woolner admitted that the Claimant had not attended classes concerning the operation of the shear machine.

The Board finds no gross negligence on the part of Claimant Gibson. In instances where an untrained, unqualified employee is given an assignment and a mishap, damage or accident occurs, gross negligence should be the standard. Perhaps the Claimant could have used better judgment but the record in this case does not support a finding of gross negligence.

For the reasons cited above, it is the opinion of this Board that the Carrier has not met its burden of proof in the case. Accordingly, this claim will be sustained.

AWARD: Claim sustained. The discipline shall be removed from the Claimant's record. The Claimant shall be compensated for the wage loss suffered within 15 days of the date of this Award.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher,
Chairman and Neutral Member

February 28, 1985
Philadelphia, PA