

NATIONAL MEDIATION BOARD

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THE AMERICAN RAILWAY AND AIRWAY SUPERVISORS' \*  
ASSOCIATION \*  
(ON-BOARD SERVICES) \*

and

THE NATIONAL RAILROAD PASSENGER CORPORATION \*  
\* \* \* \* \*

BOARD NO. 4709

Case No. 7  
(Homer Broadnax)

Award No. 3

STATEMENT OF CLAIM:

Claim for reinstatement to his former position of Chief, On-Board Service with all rights and benefits unimpaired and further that he be reimbursed for all lost wages.

OPINION OF BOARD:

The claimant was accused of sexual harassment of female employees who were working the trains with him as trainees including have sexual intercourse with one of them on a layover. One witness testified that the claimant came onto her the first time they met on the train. On the first run, after a number of them had dinner together, she ended up in his room and had sexual relations with him. He also made remarks to her on the way back on the train of a sexual nature. She testified that she was afraid for her job and gave in to him because he was a powerful person, both physically and mentally. Another witness testified that he had made advances to her by grabbing her, kissing her with his tongue down her throat and then said he wanted to f--- her. She hadn't reported the incident to management and she only testified because the claimant had given her name as a possible character witness for himself. The third carrier witness testified only as to the treatment of the claimant toward one of the witnesses after the sexual harassment act that was

rejected by the employee. She testified that he had become very hard on her on the return trip, complaining when he had nothing to complain about.

The claimant testified that the acts he had with the one witness were consensual and she was as much the aggressor as he. He testified that she didn't have any under pants on when they were on his bed, after much kissing, she got on top and they had intercourse. He testified it was all friendly and she was friendly on the trip back and they talked about getting together again in the future.

#### FINDING OF THE BOARD:

The testimony of the carrier witnesses is in most instances directly opposite to that of the claimant. The role of a trainee on her first trip is much influenced by the acts of the boss. Being away from home on overnight trips leads to a degree of togetherness that must be controlled by the person in charge. The testimony of the two witnesses would have the Board believe that the claimant was on the make from the first minute with trainees. This is believable. The kiss, as testified to by the carrier witness confirms this attitude of "let's see how far I can get". Though the acts of sexual intercourse were not against her total will, the circumstances of the situation should have been better controlled by the claimant-the boss. The fact she consented doesn't absolve him of the responsibility to see that such situations don't happen with a trainee. The Board is aware that things can happen between two adults on an overnight, but they shouldn't happen between a boss who controls a persons probationary report and the trainee. This wasn't the case of two consenting adults who had known each other for many months and who, though gambling what would happen in the working relationship, had taken the gamble. This was a boss with a trainee. It should not have

been allowed to happen by the boss. Being the Chief, On-Board Service made him responsible for the crew on the layover, as evidenced by the role the claimant took in correcting a room situation of one of the crew. His responsibilities toward the crew continued until the crew returned to base and the trip was concluded. The claimant did not live up to his responsibilities.

AWARD:

Claim is denied.

Dated at Washington, D.C., this 3rd day of April, 1990

William A. Toomey, Jr.  
WILLIAM A. TOOMEY, JR., NEUTRAL MEMBER

W. L. Pierce  
W. L. Pierce, Carrier Member

Frank Ferlin, Jr.  
Frank Ferlin, Jr., Labor Member