

PUBLIC LAW BOARD NO. 4874

FEB 1 11 45 AM '91

PARTIES ) UNITED TRANSPORTATION UNION (C&T)  
TOLEDO )  
ADJUSTED DISPUTE ) NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM:

"Request that the discipline of dismissal imposed upon Assistant Passenger Conductor D. K. Porter in connection with the following charge be rescinded, expunged from his record and that he be restored to service with seniority and vacation rights unimpaired and compensated for all time and expenses incurred, inclusive of health and welfare premiums, reduced train crew allowance and productivity savings sharing allowance, and credit for Railroad Retirement payments for each month for all time lost in connection therewith:

'On September 14, 1989, while on duty at Toledo Union Station, working as assistant conductor, train 48, between Toledo, Ohio and Cleveland, Ohio, you were found to have in your possession a concealed weapon, Smith & Wesson, Mod. 60, stainless steel, serial # ACN 5579. The weapon was found during a baggage search conducted by D. L. Saunders, Road Foreman, and S. N. Birckett, Asst. Transportation Manager. It is alleged that you were in possession of a stolen firearm not registered to yourself. The carrying of a concealed weapon in the State of Ohio is classified as a felony." (System Docket No. OC-UTU-SD-82D)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant, an employee who had transferred to the Carrier on June 24, 1986 after nine years of service with Conrail, was discharged on September 29, 1989 for violation of a Carrier rule which prohibits the possession by employees of a dangerous weapon on the company premises. The Claimant was found by two Carrier officials, i.e., a Road Foreman and an Assistant Transportation Manager, to have a hand gun in his possession while on company property and going to work on September 14, 1989 as an Assistant Passenger Conductor on Train No. 48, operating between Toledo and

Cleveland, Ohio.

The weapon was found at 11:45 P.M. on the date in question in a carryall bag or grip which the Claimant had in his possession. Further investigation revealed that the gun had previously been reported as stolen property, and that it was not registered in the Claimant's name.

The applicable Carrier rule violated, Rule F, paragraphs (3) and (7), reads as follows:

"F. Employee Conduct

3. Conduct involving dishonesty, immorality, or indecency is prohibited. Employees must conduct themselves on and off the job so as not to subject Amtrak to criticism or loss of good will.

4. Employees must not have firearms, explosives, knives (with the exception of folding pocket knives with blades under three inches long), or other weapons in their possession while on duty or on Amtrak property, unless authorized to do so by the proper Amtrak authorities."

There is no question that the above Carrier rule which prohibits employees from carrying dangerous weapons on company property is reasonable and proper since its purpose is the prevention of accidents or serious injury to employees, passengers, and others from the use or misuse of such weapons on the Carrier's premises. This Board likewise believes, absent mitigating circumstances, that it is within the limits of the prerogatives of the Carrier to hold that a violation of such rule be treated as subjecting an employee to discharge from service.

The Organization first raises three principal procedural arguments in urging that the claim be sustained account the Claimant being denied benefit of a due process hearing, i.e., 1) a failure to have provided proper notice of the company hearing; 2) denial of a requested postponement of the hearing; and, 3) refusal of the hearing officer to call as a witness the Superintendent who had told the two Carrier officials that he had reason to believe that the Claimant had a hand gun in his possession. It is also urged that the discipline be set aside in the contention that the Claimant was not aware that the hand gun was in his personal grip at the time in question.

In regard to the Organization's first procedural argument, the notice of hearing. The Board finds that a notice of hearing was timely provided the Claimant under date of September 16, 1989. He was notified that he had the right to be represented and to provide for witnesses to appear on his behalf at the hearing on September 21, 1989. Moreover, he came to hearing with two representatives from the Organization.

Secondly, that the Claimant would offer that he wanted more time to confer with an attorney with whom he had been trying to contact all week and had only just spoken with, and would state that the attorney had told him to ask for a different date on the hearing, are not found to represent sufficient reason to have delayed the company hearing. Here, it is noted that the Claimant was informed by the company hearing officer that the current Agreement restricts representation to duly certified union representatives and that if his request for a postponement was to have an attorney represent him, that the request was denied. The hearing officer thereafter determined for the record that the Claimant wanted the two union officers who were present to represent him. The hearing officer then asked the Claimant if he was ready to proceed with the company hearing, and the Claimant responded in the affirmative. In the circumstances, there is no proper basis to conclude that the Claimant had been improperly denied benefit of a postponement of the company hearing.

Finally, the Board does not find that the Claimant was deprived of a right of due process because the Superintendent was not called to testify at the company hearing. Certainly, whatever the source of or the basis for the Superintendent's knowledge relative to the Claimant having a gun in his possession in no way detracts from the fact that the Claimant was indeed found to have a gun in his possession while on company property in violation of the Carrier rules.

This Board is also not convinced that the Carrier officials had resorted to any illegal measures in seeking to determine whether the Claimant did in fact have a concealed gun in his possession. The two officials, in asking the Claimant to empty the contents of his bag on a table, told him it was account their having received a telephone call stating that he had a firearm in his possession. Furthermore, the Claimant did not object to their request, and readily admitted that he did have a hand gun, albeit he asserted that the gun had been left at a hotel. Accordingly, this Board finds no basis to hold that the Carrier officials had abridged the personal and property rights of the Claimant when they confronted him about such matter on the date in question.

In this same regard, it must be considered that the Carrier had reason to be concerned about such a matter since on two prior occasions the Claimant had been accused by two female passengers of having brandished a hand gun in their presence, albeit these particular accusations were not

This Board is also not persuaded by allegations that the Claimant was unaware that the gun was in his bag, or, principally, that one of his two sons who had been visiting with him the evening before had, unknown to the Claimant, placed the gun in the bag.

It is difficult to comprehend the defense that the Claimant left

a loaded weapon on the table at his hotel room; his 20-year old son picked the gun up and then placed it in a holster and into the Claimant's bag while visiting with the Claimant; and that the Claimant carried the bag to work without realizing or knowing that the gun had been taken from the table and placed in his bag.

The Board questions this defense particularly in the light of the Claimant having said that he carried the gun for protection while traveling to and from work. Certainly, such circumstance would dictate that the Claimant would have ensured that the gun was on the table, if not secured, in the hotel room, if it was not his intention, as usual, to take the gun with him when traveling to work. Further, since the Claimant did not have his son make an appearance as a witness on his behalf at the hearing there was no opportunity for examination of such person as concerned the contentions that the Claimant would attribute to him in regard to what had transpired in the hotel room relative to the gun.

That the Claimant would offer that he had purchased the gun at a flea market in Texas also does not mitigate his guilt or exonerate him from responsibility for unauthorized possession of a dangerous weapon while on company premises. In this regard, it must be considered that even assuming, arguendo, rightful ownership of the gun, and dismissal of questions as to whether local law required the gun be registered, the fact remains that the Claimant had not sought and did not have permission from the Carrier to have a gun in his possession while on company property.

In the light of the record it must be held that the Carrier was justified in enforcing its rule against the possession of a dangerous weapon on company premises, and that it thereby had just cause to discharge the Claimant from its service. The claim will accordingly be denied.

AWARD:


Claim denied.



Robert E. Peterson, Chairman  
and Neutral Member



R. F. Palmer  
Carrier Member



C. Bryant  
Organization Member

Philadelphia, PA  
November , 1990