

NATIONAL MEDIATION

AWARD NO. 4  
CASE NO. 4

AUG 20 1 10 PM '90

PUBLIC LAW BOARD NO. 4874

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

STATEMENT OF CLAIM:

Request that the discipline of dismissal imposed upon E. Ekstrand as a result of the following charge be rescinded, expunged from his record and that he be restored to service with seniority and vacation rights unimpaired and that he be compensated for all time and expenses incurred inclusive of health and welfare premiums, reduced train crew allowance, productivity savings allowance, and credit for Railroad Retirement payments for each month for all time lost in connection with:

"Development of the facts and determination of your responsibility, if any, in connection with your reporting off sick as a subterfuge at approximately 9:56 a.m. on Sunday, June 12, 1988, in order to avoid working on Train 69, ALB-MTR." (System Docket No. OC-UTU-SD-46D)

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 record supports the conclusion that, as charged, the Claimant was guilty of using sickness as a subterfuge on June 12, 1988 so as to avoid working a particular assignment, i.e., Train 69 from Albany, New York to Montreal, Canada.

That the Claimant was of a belief that he had been wrongfully run around by another employee the previous day, or that he would assert that he was being improperly called, may not be held to have given him a right to refuse a job or, more especially, to feign sickness once he had discussed and been given a job. If he had reason to believe that he had a valid complaint about the manner he was being treated or handled off the extra board it was necessary that he follow the orderly grievance procedures with respect to any such matter. He should have followed the long recognized principle of work now, grieve later.

The question remaining, therefore, is whether the discipline as administered, dismissal from all service, is appropriate when the

current offense is viewed in the light of the Claimant's overall past record.

The Claimant's record shows that he had entered the service of the Penn Central Transportation on December 12, 1972, and that he transferred to Amtrak on April 16, 1986. Further, this record shows that during his 17 years of service that the Claimant had been formally disciplined on 11 occasions prior to this case, and that in connection with such offenses that he had been given suspensions from service ranging from three days to 45 days for various rules violations.

While there is no question that the Claimant's past record is not an especially good one, we believe that the penalty of permanent dismissal from service is harsh and unreasonable. Accordingly, we will find that the Claimant be reinstated to service with seniority and other benefits unimpaired, but without compensation for the time lost.

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson, Chairman  
and Neutral Member



R. F. Palmer  
Carrier Member



C. Bryant  
Organization Member

Philadelphia, PA  
July 25, 1990