

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 38

System Docket No. BMW-256D

STATEMENT OF CLAIM

Appeal of the discipline of five days' suspension  
(two days actual, 3 days deferred) of William Regan.

FINDINGS

The Claimant was subject to an investigative hearing under the following charge:

It is alleged you were involved in an altercation with Michael Tolson at approximately 7:20 a.m. in the Bridge & Building locker room at Mystic on June 16, 1955. Rules F-1 and F-2 of the Amtrak Rules of Conduct may apply.

Following the hearing, the Claimant was assessed a five-day disciplinary suspension, three days of which were deferred.

The incident involves the conduct of the Claimant and another employee, while on duty and on Carrier premises. What makes it most unusual is that the other employee, a bargaining unit member,

is a Foreman and is the working supervisor of the Claimant. On the other hand, the Claimant is the Local President, while the other employee serves as Grievance Chairperson.

The hearing record clearly demonstrates that a heated argument occurred in the locker room between the Claimant and the Foreman/Grievance Chairperson as to the appropriateness of the latter's attendance at a pre-scheduled meeting with Carrier representatives. The record also shows that the Claimant used provocative and possibly inflammatory language in reference to the other employee's proper role. Eventually, the Foreman/Grievance Chairperson grabbed the collar of the Claimant's jacket. Immediately thereafter, other employees intervened, and the incident ended.

The Foreman/Grievance Chairperson was assessed discipline for his action, accepting a waiver of an investigative hearing. This is not before the Board for review. The Board finds that the relatively modest discipline assessed the Claimant was warranted. Certainly, the Carrier in general must avoid interference with internal Organization activity. Here, however, the incident occurred at a time and place where the Carrier could hardly ignore it. Both participants carry the usual responsibilities as to employee conduct, but they must also be held to a higher standard based on the supervisory capacity of one of them and the Organization status of both of them.

The Organization notes that the hearing failed to demonstrate the relationship between the Rules cited in the charge and the

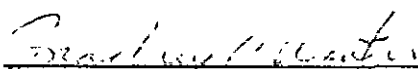
Claimant's actions. The Board does not find this of significance, since the participants were fully aware of the prohibition against their proven misconduct. The Board finds no basis to fault the Carrier's disciplinary action.

A W A R D

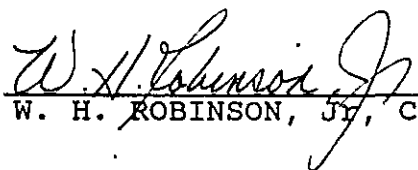
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 2/4/97