

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 39

System Docket No. BMW-267D

STATEMENT OF CLAIM

Appeal of the discipline of five days' deferred suspension assessed to William Regan.

FINDINGS

The Claimant was subject to an investigative hearing on a series of charges. Thereafter, the Hearing Officer determined that some of these charges were not proven, and these are not before the Board for review.

The Claimant was, however, found guilty of two of the charges. These are: (1) use of the Carrier's telephone while on working time, contrary to the instructions of the Claimant's Foreman; and (2) calling his Foreman a "scab".

From the extensive hearing record, the Board has no reason to question these findings. Both concern defiance and disrespect of

a fellow employee serving in the capacity of directing the Claimant's work. The Claimant, as a local Organization official, is or should be fully aware of his responsibility as an employee. On this basis, he can properly be held to a standard of conduct which, at all times in his capacity as an employee, requires him to conform to reasonable direction and to act in a respectful manner. Failure to do so can only disrupt efficiency and propriety in the workplace. Such conduct must necessarily be distinguished from those occasions in which the Claimant is entitled to exercise his responsibility as an Organization representative.

The offenses, while significant, are obviously not of the most serious nature, but they certainly are subject to corrective discipline. The resulting penalty, a five-day deferred suspension is an appropriate response by the Carrier. Once guilt was established, the Carrier is entitled to consider the Claimant's disciplinary record, which is replete with various offenses.

This disciplinary action triggered the imposition of three days' deferred suspension held in abeyance from a previous disciplinary penalty, reviewed in Award 38. That discipline was imposed on August 3, 1995 and indicated that the three deferred days would have to be served only if the Claimant committed another offense for which discipline is assessed "during the six (6) month period" following August 3, 1995. The offense here under review occurred in December 1995, within such six-month period. Thus, despite the Organization's contention to the contrary, the

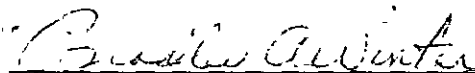
requirement to serve the three-day suspension is timely and appropriate.

A W A R D

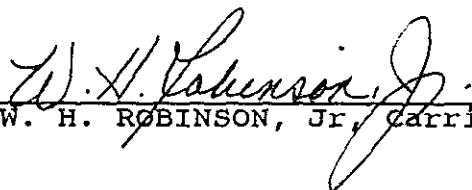
Claim denied.



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