

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 41

Case No. 41

System Docket No. BMW-270D

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Charles Straughter was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Straughter shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

The Claimant was subject to an investigative hearing in connection with the following charge:

To determine your responsibility, if any, in that it is alleged that on April 19, 1996 at approximately 1:00 p.m., you utilized Company equipment (dump truck, trailer, and backhoe) to perform non-Company related work at the personal residence of Amtrak Passenger Engineer Larry Macera, while on duty and under pay by the Company.

Additionally, it is alleged that the backhoe sustained damage to the hydraulic hose during the performance of this work at the Macera residence, and also became stuck in the landscaping at that location. This necessitated payment of overtime to other employees to repair and free the equipment.

It is further alleged that you willingly participated in Mr. Justin Macera's deception allowing you to be available to perform the above-mentioned unauthorized work.

Following the hearing, the Claimant was dismissed from service on May 9, 1996. A fellow employee was also charged and involved in the investigative hearing; his participation is reviewed in Award No. 40. In that instance, the Carrier's dismissal action was upheld by the Board. Award No. 40 is incorporated herein by reference.

The Board finds no reason to doubt that the Claimant participated or was willing to participate in use of the Company's equipment at a private residence. While it is possible that he was unaware in advance of any such contemplated use, he could, of course, have refused to participate in any way once preparation for use of the equipment was initiated.

The Claimant clearly is responsible for his improper conduct as a Carrier employee, and the Carrier correctly concluded that disciplinary action was appropriate. However, there was no proof that the Claimant played anything more than a secondary role. On this basis, the Board finds the penalty of dismissal unduly harsh and unwarranted. The Award will provide that a penalty of four months' disciplinary suspension is appropriate. As a result, the Claimant shall be entitled to reinstatement as of September 1, 1996.

(or such later date on which the Carrier is able to notify him and he reports for duty) with seniority unimpaired but without back pay or retroactive benefits.

The Claimant was present at the Board's hearing, and he was permitted to make a statement.

A W A R D

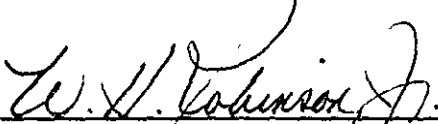
Claim sustained to the extent provided in the Findings. The Carrier is directed to make this Award effective within 30 days of the date of this Award.



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



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 9-16-96