

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 51

System Docket No. BMW-340D

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Richard A. Parish 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 Richard A. Parish 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

This dispute is related to that reviewed in Award No. 50, which is incorporated herein by reference.

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

It is alleged that on Wednesday, October 21, 1998, at approximately 3:40 p.m., while on Amtrak property, you participated in a physical altercation as a result of an argument involving [two] co-workers. The altercation resulted in a personal injury to [one of the co-workers].

Following the hearing, the Claimant was dismissed from service.

As related in the Findings of Award No. 50, the Claimant, while in the van, engaged in a physical altercation with another employee, causing damage to the other employee's eye. This conduct was made even more unacceptable when the Claimant continued the physical encounter with the other employee after both had stepped out of the van. This includes throwing a stone or other hard object at the other employee, which object struck the other employee.

In the Claimant's defense, the Organization points to his record of 21 years' service, showing only a single disciplinary action 20 years previously. The Carrier, however, does not and cannot condone such conduct by an employee, particularly when it was renewed after an initial encounter. The Board has no basis to interfere with the Carrier's enforcement of basic rules of conduct and safety or with the subsequent determination to dismiss the Claimant from service.

A W A R D

Claim denied.



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



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B. A. WINTER, Employee Member



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W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 8/10/99