

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 52

System Docket No. BMWE-341D

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Michael L. Daisy 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 M. L. Daisy 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 yourself.

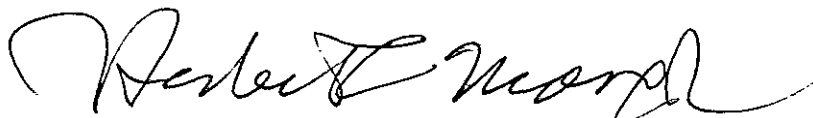
Following the hearing, the Claimant was dismissed from service.

As related in the Findings of Award No. 50, the Claimant, while in the van, engaged in an abusive verbal altercation with another employee. This conduct was made even more unacceptable when the Claimant apparently encouraged the continuation of the altercation with the other employee after the Claimant had stepped out of the van. This included a serious physical struggle. This ended by the Claimant throwing a stone or other hard object at the other employee. This is unacceptable even though this action was in response to a similar action by the other employee.

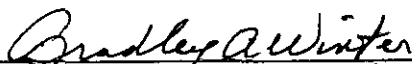
The Carrier cannot condone such conduct by an employee, particularly when it was, at least after the employees stepped out of the van, incited by the Claimant. The Board has no basis to interfere with the Carrier's enforcement of basic rules of conduct and safety or with the subsequent determination to dismiss the Claimant from service.

A W A R D

Claim denied.



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



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 8/10/99