

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 12
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 12
	*	

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (Amtrak, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The Carrier violated the effective agreement, dated May 19, 1976, on January 30, 1980, by unfairly, improperly and without just cause, dismissing Claimant Arthur B. Berger and subsequently reducing the dismissal to sixty (60) days suspension.

The sixty (60) days suspension shall be removed from the Claimant's record and he be compensated for the time held out of service."

On January 6, 1980 the Claimant was assigned as a Trackman on the Carrier's Philadelphia Division. The Claimant was called to perform emergency snow duty at Shore Interlocking, located in Northeast Philadelphia, and he arrived at the Tool House located at Shore

to commence his assignment at approximately 12:05 a.m. on January 6, 1980. At approximately 12:35 a.m., on January 6, 1980, the General Foreman and the Project Engineer arrived at Shore Interlocking to inspect the condition of switches. Not seeing the track gang that had been called and assigned to snow duty, the two officials attempted to enter the tool house and found it locked. The Project Engineer knocked on the door and the Claimant unlocked and opened it after several minutes. The Claimant and two other employees were inside the tool house. The two officials entered the tool house and observed two half empty bottles of beer on a table and a third in the hand of an employee. After opening the door, the Claimant sat down in a lawn chair beside the table.

At approximately 2:30 a.m. January 6, 1980, the Claimant was notified in writing that he was being withheld from service. By letter dated January 9, 1980 the Claimant was notified to attend a trial on January 15, 1980, to determine his responsibility in connection with an alleged violation of Rule C, which reads in pertinent part as follows:

"C. Reporting for work under the influence of alcoholic beverages ... or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited."

The trial was held as scheduled and the Claimant was dismissed from service for possession of alcoholic beverages while on duty. The Claimant appealed and the discipline was later reduced to a sixty (60) day suspension. The Claimant's appeal of the modified discipline is now before this Board.

In order for the discipline to be enforceable, the Carrier must show at least a preponderance of substantive evidence that the Claimant actually had possession of an alcoholic beverage. It is not enough to show that he was in the same room as a half-empty bottle of beer; or even that he was sitting at a table in front of a half-empty bottle of beer; or even that, sitting at the same table, was a fellow employee with a half-empty bottle of beer in his hand.

When asked if he had observed the Claimant with an alcoholic beverage in his possession, the Project Engineer responded, "No. There was half-empty beer bottles, two of them, on the table in the tool house." Similarly, the General Foreman responded to the same question with a succinct, "No sir."

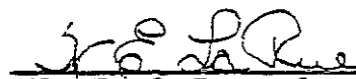
Possession of an alcoholic beverage is a serious offense. Although there was significant circumstantial evidence in this case, it must be demonstrated by substantial evidence that an employee charged with the offense did, in fact, have possession of the beverage. Admittedly, the Claimant was found in suspicious circumstances. But suspicion is not possession. Accordingly, the claim must be sustained.

AWARD:

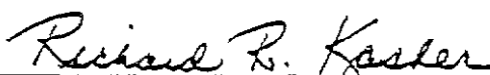
Claim sustained.



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman and Neutral Member