

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 14
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 14
	*	

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 Rules Agreement, effective May 19, 1976, as amended, particularly Rule 73 of the Rules Agreement, when it assessed discipline of dismissal on Camp Overseer, Marvin Brown, effective October 4, 1979.

The dismissal was excessive, arbitrary and capricious in light of the circumstances introduced at the trial.

Claimant Brown's record be cleared of the charges brought against him on September 14, 1979, relative to the incident which occurred on September 7, 1979.

Claimant Brown be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained."

Prior to his dismissal the Claimant held the position of Camp Overseer, Track Laying System Gang, New London, CT. By letter dated September 14, 1979, he was notified to attend a trial in connection with the following charge:

"Unauthorized use of Company vehicle, bus number 3491, and your involvement in accident while driving bus number 3491 without authority on Friday, September 7, 1979 at approximately 7:10 p.m. in the vicinity of New London, CT. Train Station."

The trial was held on September 25, 1979 and the Claimant was found guilty. The Claimant received notice of his dismissal on October 11, 1979 by letter dated October 4, 1979. The Organization alleges a violation of Rule 73 on the ground that the Carrier failed to give timely written notice of the discipline.

The Claimant appealed the discipline on October 12, 1979 in a letter to the Assistant Chief Engineer-Track. The appeal hearing was held on October 16, 1979 and the charges were sustained. The Organization again appealed on November 9, 1979, in a letter to the Director of Labor Relations. The appeal hearing was held on December 17, 1979 and the appeal was denied.

Two questions are presented:

- (1) Did the Carrier violate Rule 73 of the current Rules Agreement by failing to follow the time limitation for written notice of discipline?; and,
- (2) Was the Carrier's dismissal of the Claimant an abuse of its managerial prerogative in light of extenuating circumstances?

The procedural argument of timeliness of notice lacks merit. Rule 73 specifies that written notice of discipline shall be given "within fifteen (15) days of the conclusion of such trial." The Notice of Discipline, dated October 4, 1979, was sent by certified mail on October 9, 1979. The Claimant received it on October 11, 1979. Thus, notice was sent on the fourteenth (14th) day and received on the sixteenth (16th) day after the trial. The practice both on the property and enunciated in numerous adjustment board decisions is that the timeliness for issuance of a discipline notice is determined by the date that notice is sent, not the date on which it is received. Third Division Award 13219 (Coburn) illustrates the principle:

"The rule does not make the Carrier an insurer nor can it reasonably be read to mean that a decision is not "rendered" until it is received

...

This line of authority holds, in effect, that notice of the decision must be dispatched within the time limit in such manner as may reasonably be relied on to actually get the notice to the employee, and that prima facie evidence of compliance with the rule stems from the date the notice is sent, not from the date it is received."

The Organization also made an allegation that the investigating officer deprived the Claimant of a fair hearing by attempting to end the hearing without giving the Claimant an opportunity to question a witness, and present pertinent data. The record does not bear out the allegation. The Claimant was afforded a full and fair opportunity to present his case. After doing so, both the Claimant and his representative had no criticism of the manner in which the trial had

been conducted. The Organization has not shown that the Claimant's rights were denied, or that he was in any way prejudiced during the course of his trial.

Turning to the merits, this Board finds the dismissal was excessive in view of mitigating circumstances. The Claimant should be reinstated but without back pay.

The record shows that on September 7, 1979, the Claimant stayed on his assignment at New London after his tour had ended. A generator, the source of electrical power for the camp, malfunctioned, and the Claimant remained at the job site after his assigned hours while repairs were being made by a mechanic. The problem with the generator necessitated the use of an auxiliary generator attached to a commissary car so the car had to be opened. When repairs reached the point where the auxiliary generator could be turned off, the Claimant readied himself to leave.

The Claimant was located at Midway Camp, CT. and was returning at the end of his work week to his home in Philadelphia, PA. The Claimant found himself in an unfortunate situation. He needed to travel from Midway Camp to the New London Railway Station, a distance of approximately five (5) miles. All personnel had left the camp earlier, however, bus 3491 was at the camp. The Claimant, after a futile attempt to get authorization because no one was in the TLS office at Providence, R.I. when he called, decided to use bus 3491 to get to New London. This was a grave error in judgment.

While the Claimant's duties did occasionally require him to use Carrier vehicles, the Claimant did not have a valid driver's license. His decision to use the bus was unquestionably a bad one. It became obvious just how bad that decision was when the Claimant's bus struck an illegally parked car while he was turning into the New London Station.

The lack of discretion on the Claimant's part clearly warranted discipline. But dismissal in this case is out of proportion to the offense. Under different circumstances the Claimant's decision may have been laudable. His attending to duty beyond his required tour and his delivering transportation for the next arriving crew may have been praiseworthy save for the disabilities the Claimant had and suffered from.

But the Claimant's decision was a bad one. The only question is how severely should he be disciplined. The general rule, of course, is that the imposition of discipline is a managerial prerogative and the Board should not substitute its judgment for the Carrier's. The severity of the discipline must, however, be reasonably related to the gravity of the offense. Absent serious violations on an employee's work record, disciplinary actions should, if possible, be taken to educate rather than punish the employee. In this instance, although the employee has many previous, and serious, violations on his work record, due to the particular circumstances surrounding the offense in this case, the Claimant should be given another chance. The Claimant should be reinstated but without back pay.

AWARD:

Claim sustained.



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

August 31, 1981
Philadelphia PA.