

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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Brotherhood of Maintenance of  
Way Employes

-and-

National Railroad Passenger  
Corporation

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Case No. 2  
Award No. 2

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

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

On October 8, 1979 a hearing was held in the Carrier's offices in Philadelphia, Pennsylvania at which the below-stated claim was addressed:

STATEMENT OF CLAIM:

"(a) The Carrier violated the Rules Agreement effective May 19, 1976, as amended, particularly rules 68, 71, 74, and 64, when it assessed discipline of dismissal on Track Foreman R.D. Randall on November 30, 1977.

(b) Claimant Randall's record be cleared of the charge brought against him on November 3, 1977.

(c) Claimant Randall be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 64."

Claimant, who was a foreman of Bowie Interlocking Gang A-102, on the date of the incident which resulted in his ultimate dismissal, November 2, 1977, had a tour of duty which commenced at 7:00 a.m. and terminated at 3:30 p.m. Claimant left the job site, Odenton, and in the company of another employe, traveled to Baltimore in a company vehicle, approximately fifteen (15) miles away, to deliver reports to a supervisor's office. During this trip, the Claimant proceeded to an automobile repair shop, not part of the Carrier's facilities, to pick up his private automobile which had undergone repairs. There is no question on the record disputing the fact that the Claimant was not authorized to leave his work location for personal reasons. Neither is there a dispute on the record regarding the fact that the Claimant did not have permission to leave Odenton in the first instance. The record is not clear concerning the time the Claimant returned to his assigned duties.

On the day following, November 3, 1977, the Claimant personally called in and reported to the timekeeper that he had worked and/or was in service of the Carrier for eight (8) straight time hours and one (1) hour of overtime on the

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previous day. When the Carrier discovered that the Claimant had used part of his work day for personal business and had claimed that time as part of his work for that day with the Carrier, the Claimant was charged with violation of Rule I of the General Rules of the National Railroad Passenger Corporation's Rules of Conduct. This Rule reads in part "Employees will not be retained in service who are...dishonest ...." The charge read, "You were away from the job-site on personal business and on the following day reported eight (8) hours plus one (1) hour overtime. This occurrence took place on November 2, 1977."

An investigation on the above charge was held; the Claimant was found guilty and dismissed; and, the Organization appealed the Claimant's dismissal through the appropriate steps of the grievance procedure terminating in the submission of the dispute to this Board.

It is the position of the Carrier that the Claimant received a full and impartial trial and was found to be in violation of the Carrier's Rules of Conduct which provide that an employee will not be retained in service who is insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who does not conduct himself in such a manner that the Company will not be subjected to criticism and loss of good will (Carrier's emphasis)(Rule I). The Carrier further contends that the discipline of dismissal was neither arbitrary or capricious, but was warranted and justified in light

of the gravity of the offense.

The Organization contends that the discipline imposed was harsh, discriminatory, and excessive and that the Claimant's having worked overtime on the evening prior to November 2, 1977 restricted his ability to use that time for his personal business. The Organization further contends that the time used by the Claimant for personal business was a minimal infringement upon Company time. Finally, it is the position of the Organization that the charge is unreasonable and defamatory. The Organization contends that this minor disruption in the Carrier's business is not thievery.

Nowhere in the record before us is there any indication that the Claimant was given express or implied permission to leave the Company's premises, during assigned working hours, to tend to personal business. In fact, the record is not clear regarding the Claimant's leaving the Carrier's premises for purposes of delivering the reports (mail). It is apparent, from the evidence, that the Claimant intended upon his departure from the Carrier's premises to attend to personal business. We find no justification in the records before us for the Claimant traveling to a private garage, picking up his personal automobile, and returning from this private establishment to the Carrier premises. The amount of time consumed in this sojourn on personal business is not specified in the record before us. Nevertheless, the actions themselves are clearly violative of the responsibilities of any employee to his employer.

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The Claimant compounded this unauthorized absence from duty when he claimed payment for that time period. It is admitted on the record below that the Claimant did in fact personally seek to be compensated for the time involved in his pursuing personal business. The guilt of the Claimant of the charge preferred was clearly and fairly established.

We do not agree with the Organization that the charge was defamatory or that the Claimant was charged with being a thief. The notice of investigation clearly specified that the Claimant was being charged with dishonesty. We find that it is dishonest to claim payment for time alleged to be in the Carrier's service where the time has not been so spent.

This Board finds that the Claimant's guilt was clearly established and finds no basis for mitigating the discipline imposed by the Carrier.

AWARD

Claim denied.

Richard R. Kasher

Richard R. Kasher,  
Chairman and Neutral Member

William E. LaRue

William E. LaRue,  
Organization Member  
P.L. Board No. 2406

S. H. Heltzinger

S. H. Heltzinger,  
Carrier Member  
P.L. Board No. 2406

DATE:

12/28/79