

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

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| NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) | *              |
| -and-  | *              |
|  | * CASE NO. 20  |
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| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES      | * AWARD NO. 20 |
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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:

- "a) The Carrier violated the effective Agreement dated May 19, 1976, on November 3, 1980 by unfairly, improperly and without just cause dismissing Claimant L. L. Morrison from service.
- b) Claimant Morrison shall be reinstated to Carrier's service, compensated for all wages lost, and have all seniority and other rights returned unimpaired."

Prior to his dismissal, the Claimant was employed as a Third Railman in the Carrier's Electric Traction Department on the New York Division of the Northeast Corridor. On September 24, 1980, the Claimant received notice to appear for

trial on October 21, 1980, regarding the following charge:

"Violation of Amtrak's Rules of Conduct, the portion of Rule 'O' which reads as follows: No employee shall misuse...passes, and the portion of Rule 'U' which reads as follows: Employees shall not permit unauthorized persons access to...tickets..., in that on September 17, 1980, you acquired an Amtrak ticket to Miami, Florida, via your Rail Travel Privilege Card and allowed an unauthorized person to use said ticket to travel."

The trial was held as scheduled on October 21, 1980. Based on evidence presented at the trial the Claimant was dismissed from service effective November 3, 1980. Discipline was sustained after appeals to the Assistant Chief Engineer and the Director-Labor Relations. Failing to reach settlement, the parties agreed to submit this case to Public Law Board No. 2406.

Based on the credible evidence of record, this Board finds that the discipline assessed was reasonably related to the proven offense. Dismissal is warranted by the following substantial evidence: The Claimant was eligible under the Carrier's policy to use a Rail Travel Privilege Card for his personal rail travel. He obtained a ticket providing free transportation from New York City to Miami, Florida for September 17, 1980. Pursuant to Carrier policy, the Claimant signed that ticket in the presence of Conductor Hollifield on Train No. 87. The ticket was accepted for transportation and the Claimant was assigned a seat on Train No. 87.

Shortly before the train pulled into the station at Newark, the first stop South after departure from New York, the Conductor

was told of an apparent ticket irregularity involving a male and a female in the Tavern Car. As the Conductor made his way toward the Tavern Car to investigate, the Claimant came out of that car with a woman. The Conductor was advised that this was the woman involved in the ticket irregularity but that the Claimant was not the man involved. The woman said that she wanted to get off the train at Newark, a stop scheduled only to receive, not to discharge, passengers. When the train reached Newark, the Conductor opened a door for the woman to depart. The Claimant wished to accompany her. The Conductor warned the Claimant that if he got off the train he might not be able to get back on time to reboard. The Claimant left the train with the woman.

Conductor Hollifield entered the Tavern Car to investigate the ticket irregularity of the man, who had been reported to the Conductor as having presented a ticket reading Trenton to Newark for transportation. The Conductor asked the ticketholder where he was going and the man said that he was going to Miami. The Conductor asked for the ticket receipt and was handed the receipt that the Conductor had returned to the Claimant covering the Claimant's transportation from New York to Miami. The Conductor asked the man to leave the train and then summoned the Amtrak police. At the Amtrak Police Department office, the man identified himself as the Claimant's cousin and, in a written statement, informed the Amtrak police that the Claimant had told him that the Claimant would give him a ticket to Miami that would cost him nothing.

The Claimant's alleged cousin, Mr. Herbert McKenny, also stated that he and the Claimant boarded Train No. 87 on that day in New York, and traded tickets. Prior to departure of Train No. 87 from Newark, Conductor Hollifield searched the train for the Claimant but failed to find him.

Neither the testimony of Conductor Hollifield nor the written statement of the Claimant's cousin were refuted at the trial. There was no evidence that the statement by the Claimant's cousin was given under duress. The Claimant's defense is that he intended to travel to Miami but was unable to return to Train No. 87 at Newark.

This contention is overwhelmingly contradicted by the evidence of record. The train stayed at the Newark station for five to seven minutes. The train doors were open. There was no corroborative evidence that the Claimant was denied access to the train or that he made any attempt to board the train at Newark. Moreover, the Claimant's assertion that he intended to travel to Miami is cast further in doubt by the fact that he had not marked off duty for the necessary days for such a trip. The Claimant testified that he intended to mark off when he reached Miami, however, it might be noted that by the time he would have reached Miami, he would have already been absent for at least one tour of duty.

Conceding that it is only supposition that the Claimant did not intend to make the trip to Miami, we are left with the unrefuted testimony of Conductor Hollifield, the Claimant's alleged cousin, and the Amtrak police. We are left also with the undeniable

fact that the Claimant's alleged cousin was holding a ticket to Miami that had been obtained by the Claimant.

The Organization also argues that the Carrier failed to meet its burden of proof because it didn't introduce the tickets, allegedly exchanged, as evidence, nor did it produce Mr. McKenny, the alleged cousin of the Claimant, as a witness at the trial.

This Board holds that the Carrier relied upon substantial, credible evidence in finding that the Claimant and another individual exchanged rail travel tickets in violation of established Carrier Rules. The failure to produce the tickets themselves does not weaken the testimony of the Conductor who discovered the improper ticket exchange.

The Carrier diligently attempted to locate "Mr. McKenny" in order that he could be present at the trial, but no such person could be found at the address given in Newark, New Jersey or located by the Newark phone company. Even if Mr. McKenny was not the Claimant's cousin and even if the statement of Mr. McKenny, obtained by proper authority, was not allowed to stand in the record, the Claimant has not justified giving his free ticket for transportation to an unauthorized person. The Claimant, confronted by credible testimony, never explained how and why "Mr. McKenny" came into improper possession of the New York to Miami ticket.

This Board finds that the Carrier proved the offense and had just cause for dismissing the Claimant. Accordingly, the claim will be denied.

AWARD: Claim denied.



R. Radke, Carrier Member W. E. LaRue, Organization Member



Richard R. Kasher, Chairman  
and Neutral Member

September 20, 1981  
Philadelphia, PA