NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	
- and -	CASE NO. 22
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	AWARD NO. 22

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 Employes (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.

This case is actually two cases which have been combined, NEC-BMWE-SD-57D and NEC-BMWE-SD-59D. After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claims:

> "The discipline assessed, ten (10) working days suspension (NEC-MW-SD-57D) and twenty (20) working days suspension (NEC-MW-SD-59D) was excessively harsh, arbitrary and capricious in view of mitigating circumstances as revealed by a review of the records.
>
> The Claimant's personal record be cleared of the charges, and compensation be allowed for the combined thirty (30) days held from service."

The Claimant, James F. Devlin, Jr., was assigned to the position of Maintenance of Way Repairman, with headquarters at Baltimore, Maryland, during the time period involved in this case. In case SD-57D, he was notified by letter dated October 16, 1978, to appear for a trial on November 16, 1978, in connection with six (6) latenesses for work in September and October, 1978. In case SD-59D, he was notified by letter dated November 15, 1978, to appear for a trial on January 3, 1979, in connection with eleven (11) more latenesses for work in October and November, 1978.

In both cases, the Claimant was charged with violations of the Carrier's Rules K and L, which read in part: "Employees must report for duty at the designated time and place..." (Rule K); and "Employees shall not...be absent from duty...without proper authority." (Rule L). The Claimant appeared at both trials and was accompanied each time by a duly authorized representative of the Organization. The Claimant was found guilty in both cases (at the trial in case SD-59D, one of the eleven (11) charges of lateness was withdrawn), and the Claimant was assessed with first a ten (10) day suspension and then a twenty (20) day suspension.

The record indicates that there is essentially no dispute over whether the Claimant reported late for work on numerous occasions between September and November, 1978. The Organization points out that while tardiness cannot be condoned, there are mitigating circumstances in this case, and that the discipline assessed was excessively harsh in the light of those circumstances.

The Organization contends that when the Claimant was tardy it was as a result of matters over which he had no control. These included such matters as illness in his family, power failure, car trouble, and adverse driving conditions. When the Claimant knew he would be late, he made efforts to call in as soon as possible. His supervisor told him that they would prefer that he came in late than miss the whole day. The Claimant is regarded as a good worker, whose supervisor referred to him as "one of my better mechanics," and who generally makes himself available for work when needed. At the time of the latenesses, he was traveling 110 to 120 miles round trip from his home to his work site.

The Carrier argues that it has a right to expect its employees to report for work on time. The Claimant, it is contended, holds the highly specialized position of Maintenance of Way Repairman and it is one which the Carrier cannot readily fill at the start of the work day if the incumbent is not there on time. The Carrier argues that habitual lateness cannot be tolerated because of its disruptive effect on the Carrier's operations.

This Board has noted the mitigating circumstances argued by the Organization. However, it cannot impose mitigation in light of the chronic pattern of tardiness shown over an extremely brief time period. On July 28, 1978, the Claimant was given a warning letter for eight (8) latenesses in June and July, 1978. Then came the series of latenesses in September, October and November,

1978, which gave rise to the two instant suspensions. Under the circumstances of this case, any consideration of mitigation must give way to the Carrier's need to run an efficient, productive service. Accordingly, the claim should be denied.

AWARD: Claim denied.

R. Radke, Carrier Member

W. E. LaRue, Organization Member

Richard R. Kasher, Chairman
and Neutral Member

December 31, 1981
Philadelphia, PA