

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
-and-	*	CASE NO. 23
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 23
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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:

- "1) The Claimant was dismissed on a charge that has not been factually substantiated by the testimony put forth at the trial.
- 2) The Claimant be restored to service with seniority rights and all other privileges unimpaired, and he be compensated for all wages lost as a result of such dismissal."

Prior to his dismissal, the Claimant, John Warren, was employed by the Carrier as a painter, B & B Department, Newark,

New Jersey. At approximately 10:00 p.m. on April 18, 1979, an official of the Carrier received a telephone call informing him that Amtrak truck No. 3290 was seen on Route 1, north of Trenton Station, after hours. The next morning at approximately 5:45 a.m. a search was made of the Trenton Station area where the truck is parked when not in use. The truck could not be located and the Amtrak Police Department was notified. At 7:45 a.m. the Claimant drove into the Station in truck No. 3290.

By letter dated April 20, 1979, the Claimant was directed to report for trial on May 14, 1979. He was charged with:

"Unauthorized use of Company vehicle. Above charge is in connection with incident which occurred on April 18, 1979, and April 19, 1979, whereas, you took Amtrak vehicle No. 3290 from Trenton Station at approximately 4:40 p.m., April 18, 1979, for personal use and returned the truck at 7:45 a.m. on April 19, 1979."

The trial was postponed by mutual agreement to May 29, 1979. The Claimant was present at the trial and was accompanied by a representative of the Organization. The Claimant was found guilty of the charge and was dismissed from service by letter dated June 4, 1979.

During the trial, Acting General Foreman John Nizolek testified that he received a telephone call on the evening of April 18, 1979, from Mr. Wayne Pearson, Amtrak carpenter. Mr. Pearson told him that at approximately between 4:45 and 5:00 p.m. that day he had seen Amtrak Truck No. 3290 on the road in the vicinity of Lawrenceville, New Jersey. Mr. Pearson did not appear at the trial.

When the truck could not be found in the Trenton Station early the next morning, the Amtrak Police Department was notified, and police officers interviewed the Claimant after he drove the truck into the Station at approximately 7:45 a.m. According to the police officers, the Claimant stated that he had parked the truck on Charles Street, about one mile from the Station. When asked why, he said he had stayed out there all night.

The Claimant denied any wrongdoing at the trial. He stated that he had tried to park the truck at the Trenton Station but could not find a parking space. He then parked the truck on a lot which is less than one mile from the Station, and took a train to Newark. The next morning he picked up the truck and drove it into the Station.

This Board finds that while the Carrier has shown that it had grounds for suspicion, it has not met its obligation to prove by substantial evidence that the Claimant made improper use of Amtrak vehicle No. 3290. Mr. Pearson, the only alleged witness to an improper use of the truck, did not appear at the trial and was not available for cross-examination. For that reason, this Board cannot accept as fact that the truck was seen on the road north of Trenton.

There is no dispute that the truck was not parked at the Trenton Station. The Amtrak police officers testified that the Claimant stated he parked outside the Station because he was hanging out there all night; the Claimant testified that he could

not find a parking space and that there was no misuse of the vehicle.

In any event, the Carrier did not meet its burden of proof and demonstrate that parking outside the Station limits equates to misuse of the vehicle in this case. In the absence of hard evidence (for example the eyewitness, or mileage logs) and in view of the Claimant's contradiction of the circumstantial showing made by the Carrier, this Board is constrained to sustain the claim.

AWARD: Claim sustained



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member