

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

Brotherhood of Maintenance of
Way Employees

-and-

National Railroad Passenger
Corporation

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Case No. 3
Award No. 3

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 Employees 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, 69, 71 and 74, when it assessed discipline of dismissal on Carpenter Ronald Hussey on September 9, 1977.

(b) Claimant Hussey's record cleared of the charge brought against him on July 8, 1977.

(c) Claimant Hussey 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 also be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Traveler's Group Policy, GA-23000."

The Claimant was employed as a carpenter in the Carrier's station in Newark, New Jersey. His tour of duty on the date in question commenced at 7:00 a.m. and terminated at 3:30 p.m. On the date in question, July 1, 1977, the Claimant at approximately 9:15 a.m. reported to supervisory personnel that he was sick and desired to go home.

The Claimant was directed to the Carrier's medical department to be checked for overall fitness and the possibility that he was under the influence of alcoholic beverages. The Carrier judged that the Claimant was in fact intoxicated on the date in question and Claimant was dismissed from service as a result of this condition. This dismissal was effected after the issuance of a disciplinary notice and the holding of an investigation. The Carrier's imposition of discipline was appealed through the appropriate steps of the grievance procedure before its ultimate submission to this Board.

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It is the position of the Carrier that it has a significant responsibility to insure, to the highest degree in its operation of the Railroad, the safety of the traveling public, its own employees, and its property. Therefore, the Carrier contends that it has established and published Rules of Conduct for the guidance of its employees including the Rule which it alleges was violated in the instant case, Rule "C". This Rule explicitly and unambiguously prohibits both those employees subject to duty and those employees actually on duty from using alcoholic beverages. The Carrier contends that the record is clear; that the Claimant was under the influence of alcoholic intoxicants; that the testimony of laymen as to the usual indicia of intoxication is sufficient evidence from which a proper determination can be made regarding an individual's being under the influence of alcohol; and, that the Claimant was properly found guilty of the charge and that the discipline imposed was commensurate with the offense.

It is the position of the Organization that the Claimant was summarily removed from service on July 1, 1977, but that the Notice of Trial was not given until July 8, 1977 and therefore, the relief sought in parts (b) and (c) of the Statement of Claim should be granted. The Organization argues that the Claimant was not properly notified in a reasonable amount of time of that with which he was charged.

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The first issue to be addressed is whether the record below sufficiently established the Claimant's guilt and whether the discipline imposed was arbitrary or capricious. A reading of the record below indicates that there is an unresolved question as to when the Claimant took his last drink on the day of July 1, 1977. It is the Claimant's testimony that he last indulged in the consumption of alcoholic beverages at or about midnight of the date in question. There is no evidence that Claimant consumed any alcoholic beverages on the job subsequent to the commencement of his tour of duty at 7:00 a.m. on the morning of July 1, 1977. However, substantial credible evidence exists, from both lay people and the Carrier's medical department, that the Claimant was under the influence of alcohol while on duty. The evidence also supports the finding that the reason for the Claimant's seeking to be relieved from duty was directly related to the influence of his alcoholic consumption.

Nothing in the record before us demonstrates that the Claimant was dealt with unfairly or that his being required to report to the Medical Department prior to his marking off sick was an improper or discriminatory act by the Carrier. The totality of the evidence before this Board supports the Carrier's conclusion that the Claimant was in violation of its Rules of Conduct and thus we will not disturb the Carrier's assessment of guilt or imposition of discipline.

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The Organization's argument that the Carrier acted improperly and violated the Agreement, specifically Rules 68 and 69, when Claimant was removed from service on July 1, 1977 but did not receive a Notice of Trial until July 8, 1977 falls in face of the language of those two cited Rules. Rule 68 provides that "Employees shall not be suspended nor dismissed from service without a fair and impartial trial." Rule 69, provides in relevant part, that "When a major offense has been committed, an employee considered by AMTRAK to be guilty thereof may be held out of service pending trial and decision."

Although there is some difference in the language of Rule 69 as quoted to us by the Organization and the Carrier, both citations contemplate that an employee may be held out of service, where a major offense has been committed, pending trial/investigation and the ultimate decision. Nothing in the record before us indicates that the Claimant was not guilty of a major offense or that the Carrier did not have the right to hold the Claimant out of service until a determination on the charge was made. Therefore, we find that the Carrier did not violate the procedural rules regarding the imposition of discipline in this case.

We would be remiss if we did not address the question of the possibility of rehabilitation of this employee. It is recognized that the question of rehabilitation is not properly before this Board and was not raised on the property in the record before us. However, alcoholism today is viewed in a much

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different perspective than it was when rules were first written prohibiting its use by employees. We consider alcoholism today as a problem which robs the employee of his health and dignity and which causes management the loss of productivity and the potentiality of property destruction.

In the railroad industry, labor and management have shown the way through cooperative efforts in attempting to treat with this mutual problem of alcoholism. We note that the Claimant, allegedly, has engaged in a program of self rehabilitation. It would be consistent with the industry's desire to meet and beat the problem of alcoholism if the parties in this case made some attempt, outside the confines of this Award, to address the Claimant's problem.

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

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