

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 33
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 33
	*	

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.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "(1) The dismissal of Trackman Jesse Ramirez for alleged violation of Rules K and L on July 7, 1980, was excessive and wholly disproportionate to the offense with which charged (Carrier's File No. NWE-D-018).
- (2) Trackman Jessie Ramirez be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

At the time of his dismissal from service, Claimant Jesse R. Ramirez was employed by the Carrier as a Trackman at Chicago, Illinois. By letter dated July 11, 1980, Claimant was directed to report for a formal investigation on July 16, 1980, concerning

his alleged violation of Carrier Rules C, K, and L. Specifically, Claimant was alleged to have absented himself from duty without proper authority at 1:05 p.m. on July 7, 1980, at which time he was alleged to be drinking in a bar. The investigation was rescheduled to July 18, 1980, and was held on that date. Claimant was present and was accompanied by a duly designated representative of the Organization. By letter dated July 28, 1980, Claimant was notified by the Carrier that he had been found to be in violation of Rules K and L (the charge concerning Rule C was thus dismissed) and that he was separated from the Carrier's service effective that date.

Rules K and L read as follows:

- K. "Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor."
- L. "Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place without proper authority."

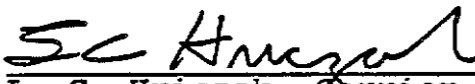
The record in this case is clear. The Carrier has shown by substantial, and essentially uncontroverted, evidence that Claimant was at a bar at a time when he was supposed to be on duty, and that Claimant had no justification whatever for his absence from work.

The Organization states that this Board's decision is necessarily restricted to the evidence adduced at the investigation. On that basis it urges this Board to conclude that the Carrier's determination to assess the penalty of dismissal was disproportionate to the offense covered by that investigation, i.e., an unauthorized

absence of approximately one and one-half hours. The implication of this is that the Carrier improperly considered the Claimant's service record when it decided to assess the penalty of dismissal.

It is true that the question of guilt or innocence is limited to the record developed at the investigation, and as we have stated in the preceding paragraph, the evidence adduced at the investigation amply justifies the Carrier's conclusion that the Claimant violated Rules K and L. Once having established guilt based on the facts contained in the record, the Carrier was well within its rights to review Claimant's service record for the purpose of determining the level of discipline. Given Claimant's service record, it is the view of this Board that the penalty of dismissal was not excessive or disproportionate. Accordingly, this claim must be denied.

AWARD: Claim denied.


L. C. Hriczak, Carrier Member


W. E. LaRue, Organization Member


R. R. Kasher, Chairman and
Neutral Member

June 4, 1982
Philadelphia, PA