

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
-and-	*	CASE NO. 36
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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 36
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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 Carrier violated the effective Agreement dated May 19, 1976,

"(a) on August 6, 1980, when it held the Claimant Curtis Lee Ash out of service beginning at 11:00 A.M. August 6, 1980;

"(b) directed him to return to service on August 14, 1980, restricting him to the 'duties and responsibilities as trackman...'; and

"(c) on August 29, 1980, by unfairly disqualifying Claimant Ash from all 'class of foreman and all positions therein.'

"2. The Claimant shall be compensated for the time held out of service and the difference between the trackman rate and the foreman's rate of pay for all the time worked and/or what he would have earned working as a foreman; the disqualification as foreman removed; and the matter be expunged from his record.

"3. The discipline administered was excessive and harsh for the offense."

The Claimant, Curtis Ash, entered the service of the Carrier on June 13, 1977, as a Trackman. On August 6, 1980, the date of the incident giving rise to this claim, the Claimant was assigned to the position of Foreman in the High Speed Surfacing Gang AO22, located at River Interlocking, Baltimore, Maryland.

By letter dated August 6, 1980, the Claimant was held out of service as a result of a derailment which occurred early that morning. By letter of August 11, 1980, the Claimant was notified to appear for trial on August 21, 1980, in connection with the following charges:

"Violation of National Railroad Passenger Corporation Operating Rule and Instruction 809, reading in part: Track car movements entering within limits of an interlocking must receive a proceed indication on all interlocking signals governing route to be taken except the interlocking signal controlling movement into the block. After effecting delivery of the Track Car Permit Form 'M' as provided for in Rule 806, the Operator will issue a Clearance Permit Form 'C' to authorize movement to pass signal controlling movement into the block.

"Violation AMTRAK (M of W) Safety Rule and Instruction 4204(b), reading in part:

"4204-When operating self-propelled equipment...

"(b) Maintain constant lookout in the direction in which moving, particularly on curve, at switch, frog, crossing, or intersection for obstruction or other unsafe condition.

"Violation AMTRAK (M of W) Safety Rule and Instruction 4222, reading in part:

"Operate Equipment...on track at not exceeding the speed indicated below. (If the track on which the equipment is being operated is restricted by Timetable

or Train Order, such equipment must not be operated in excess of the speed so specified.)

"(O) Over highway or railroad-grade crossing, switch, turnout, derail and through open side of frog - 5 (five) MPH.

"On August 6, 1980 at approximately 5:05 A.M. equipment for which you were responsible, as Foreman, passed the 206-L Signal in the vicinity of River Interlocking without proper authority and in excess of authorized speed, while the 205 switch was not lined for such move. This resulted in the equipment for which you were responsible, as Foreman, derailling and causing delay to trains."

The Claimant was returned to duty effective August 17, 1980, with his duties restricted to those of Trackman. Four days later, the trial was held on schedule. The Claimant was present and accompanied by a duly designated representative of the Organization. The Claimant was found guilty as charged, and by notice dated August 29, 1980, he was informed that he was disqualified from the class of foreman and all positions therein.

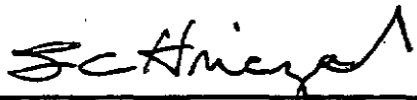
The record makes it clear that the Claimant did pass the 206-L signal without proper authority, that the equipment for which he was responsible was moving in excess of the authorized speed of five (5) miles per hour, that he did not check to see that the 205 switch was lined for the move, and that a derailment did result. In fact, the Claimant has forthrightly admitted to this. However, the Organization urges the Board to consider certain extenuating circumstances.

The incident occurred in the dark (5:05 a.m.) and there was inadequate lighting available. The Claimant was new to the territory and not familiar with it. The Claimant's machinery

did not have a speedometer or a radio, both of which the Claimant had requested. Also, the responsibility for the derailment was not only that of the Claimant. The Claimant was not physically operating the equipment in which he was riding; the operator must share responsibility for the errors resulting in the derailment. Further, the Claimant was led to believe by the General Foreman High Speed Surfacing that he had authorization to pass Signal 206-L, despite the absence of "M" and "C" forms. The final mitigating circumstance cited by the Organization is the Claimant's clean employment record.

It is this Board's decision that while the Claimant was, without dispute, in violation of the Carrier's Rules, it agrees with the Organization that there are mitigating circumstances present, notably the fact that responsibility for the incident must be shared by others, plus the Claimant's work record. While this Board considers that some penalty was appropriate, under the circumstances of this case, it views permanent disqualification from the foreman class of positions as harsh and excessive. Accordingly, this claim must be sustained.

AWARD: Claim sustained. The disqualification shall be converted from permanent to 180 days. The Claimant shall be entitled to the foreman's rate after the expiration of a 180 day disqualification period, plus pay at the foreman's rate for the period held out of service prior to the trial.


L. Hriczak, Carrier Member


W.E. LaRue, Organization Member


Richard R. Kasher, Chairman and Neutral Member