

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 42

AWARD NO. 42

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:

"(a) The Carrier violated the effective Agreement dated May 19, 1976 on August 1, 1980, by unfairly and unjustly dismissing Claimant Alonzo Gwynn.

(b) Claimant Gwynn shall be restored to service with seniority unimpaired and compensated for all wage loss."

Claimant Alonzo Stephen Gwynn entered the Carrier's service on July 15, 1979. On June 12, 1980, the date of the incident giving rise to this claim, he was a Trackman working out of

New Brunswick, New Jersey. On June 12, 1980, the Carrier notified the Claimant that he was being held out of service for being "in men's room Penn Station, New York in possession of with intent to use heroin, marijuana and narcotic paraphernalia." On June 25, 1980, the Carrier gave the Claimant notice to attend a trial on July 15 in connection with the following charge:

"In Violation of the National Railroad Passenger Corporation (AMTRAK) Rules of Conduct, Rule I which states: "Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of goodwill," in that, on June 12, 1980, you were found by Amtrak Police in men's room, Penn Station, New York, in possession of with intent to use heroin, marijuana and narcotic paraphernalia."

At the Carrier's request the trial was postponed until July 22, 1980. The Claimant was present and accompanied by a duly designated representative of the Organization.

The Carrier contends that the trial record contains sufficient evidence to establish that the Claimant was in possession of heroin on the Carrier's property, and that discharge is an appropriate penalty for employees involved in such immoral and illegal behavior. The Organization contends that the Claimant was off duty at the time of the alleged incident, that the Claimant was merely inspecting items discovered by his companion, and that all criminal charges against the Claimant have been dropped. The Organization further contends that the Carrier has not shown

that any publicity or loss of goodwill resulted from the incident, a prerequisite for issuing discipline to employees for their off duty activities.

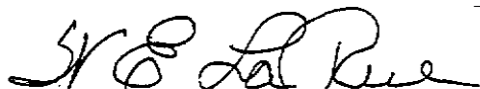
The record establishes that on June 12, 1980, the Claimant, while off duty, went to Amtrak's Penn Station in New York, New York. While there, a police officer found him with a companion in a stall located in the men's room. The police officer identified himself to the Claimant. The Claimant opened the stall door while holding one syringe in his hand. The police officer then searched the Claimant and found him in possession of a functional hypodermic needle and three glassine bags containing a white powdery substance, later determined by police tests to be heroin. The police officer also searched the Claimant's companion, and found him in possession of three empty glassine bags containing residual amounts of a white powdery substance. The Claimant's companion told the officer that the substance was heroin. The Claimant and his companion were arrested. The police charged the Claimant with possession of the hypodermic needles and the three glassine bags containing heroin.


The Claimant testified that he went to the men's room with a companion and, while there, his companion found hypodermic syringes and packets in his stall. When the Claimant entered his companion's stall to inspect the items, the police arrived. The Claimant stuffed all the items, except for a syringe, into his sock.

The record contains substantial evidence to support the Carrier's charge. The rule under which the Carrier discharged the Claimant prohibits dishonest and immoral conduct which will subject the Carrier to criticism and loss of goodwill. Arbitrators have long recognized that certain off duty activities which involve moral turpitude justify disciplinary action. In this Board's view, the Claimant's possession of heroin on the Carrier's property fits that class of offenses. It is not controlling that the Claimant was not convicted of the criminal charges brought as a result of that immoral conduct. The Carrier is subject to criticism and loss of goodwill when such immoral conduct occurs on its premises. Accordingly, the claim is denied.

AWARD: Claim denied.

  
L. C. Hriczak, Carrier Member

  
W. E. LaRue, Organization Member  
(Dissent)

  
Richard R. Kasher, Chairman  
and Neutral Member

November 14, 1983  
Philadelphia, PA