

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

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Brotherhood of Maintenance of  
Way Employees

-and-

National Railroad Passenger  
Corporation (Amtrak)

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Case No. 5  
Award No. 5

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 Corp. (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 69, 71, 64 and 73, when it assessed discipline of ten (10) days' suspension on Ironworker Helper, Terry Douglas on June 9, 1978.

(b) Claimant Douglas' record be cleared of the charge brought against him on May 18, 1978.

(c) Claimant Douglas 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 was disciplined for an occurrence which took place at the North Philadelphia Station, on May 18, 1978. He was charged and found guilty of the following:

"A deliberate violation of Safety Rule 3501 which states: 'Flammables, gases, chemicals, acids and other such substance must not be stored near pilot light, open flame or other source of open light or heat. While working at North Philadelphia Passenger Station in the Ironworkers' Shop on May 18th, 1978 at 1:30 p.m., you removed a large paint brush from a bucket of paint thinner and trailed this brush dripping with a paint thinner, passing within two feet of employee, Steve Holmes, who was using an oxygen-acetylene torch cutting a piece of angle. This action endangered the lives of Ken Webb, Steve Holmes, Francis Guld, and necessitated evacuation of the shop."

The Organization appealed the discipline imposed through appropriate steps of the grievance procedure and brings the case to this Board for resolution.

It is the Carrier's position that the Claimant was guilty of violation of its safety rules, which the Carrier argues it publishes in order to protect its employees as well as members of the public that use the Carrier's services. The Carrier further argues that the guilt of the Claimant was clearly established and that the Claimant did not take necessary precautions in handling

the responsibilities of his position. The Carrier argues that the paint brush could have been wrapped in some way or that the Claimant could have chosen another route to take the dripping paint brush so that he would not have passed within close proximity of the oxygen-acetylene torch. The Carrier also contends that the Claimant's action was deliberate and malicious and that therefore the discipline was properly assessed.

The Organization contends that no exact charge was brought against the Claimant and no allegation was proven. The Organization further argues that Claimant's suspension from service prior to his trial was unwarranted and that the discipline imposed was harsh and arbitrary.

There is no question that the Claimant, in the course of his performing his painting duties, dripped paint thinner from the brush he was using dangerously close to an oxygen-acetylene torch which was in use. However, just as there is no question that some paint thinner dropped from the Claimant's paint brush, there is no credible evidence to substantiate the Carrier's allegation that the Claimant's actions were deliberate or malicious.

The totality of the evidence before this Board indicates that the painting operation being conducted at the particular site had been and was subject to what might be considered safety hazards per se. Specifically, the same can of paint thinner, which the Claimant was using, had been left open for a substantial period of time prior to the incident here involved. Further, that same

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can of paint thinner had ignited previously. Although we don't know the cause of the fire, presumably it was caused by action of the welding and/or the oxygen-acetylene torch equipment which was used in a closely confined area of the work place.

The Carrier has suggested that the Claimant might have taken better precautions in carrying the dripping paint brush by either wrapping a rag around the brush or taking a different route outside of the work situs. We do not know whether such a route was available to the Claimant or if rags for wrapping paint brushes, were at the Claimant's disposal.

It appears that the violation alleged to be committed by the Claimant was associated with the overall intent of the safety rules which concern the proper storage of the type of materials specified in those rules. We are led to believe from the record before us that safety violations previously occurred and that the Carrier started, with the Claimant, to meet its responsibilities to its safety rules. However, we do not find that the Claimant's actions were deliberate or malicious. We find that the Claimant was not prudent in the manner in which he handled the dangerous materials for which he was responsible. The Claimant contended that he did not disobey his supervisor's instructions regarding where he should be doing his painting because he had been previously advised to comply with the Carrier's directives and to complain later. However, in a case such as this the Claimant, if he recognized the danger involved, would have been a more responsible and safety-conscious

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employee if he had brought this danger to the attention of his superiors. And, if he recognized that he could not adequately clean the brush, to the extent that it did not represent a safety hazard when he passed near the acetylene equipment, then this fact should also have been brought to the attention of supervisory personnel.

In the context of the entire record, we find that the Claimant should have been more circumspect regarding the dripping paint thinner. However, we find that the Claimant was not malicious or deliberate in his actions and we find further that his previous safety/discipline record did not justify the imposition of the suspension in this case. We will therefore sustain the claim of the Organization to the extent that it is sought in paragraphs (a) and (c), but note that Claimant was justifiably reprimanded for his imprudent action.

AWARD: Claim sustained to the extent stated in the above opinion.

Richard R. Kasher  
Richard R. Kasher,  
Chairman & 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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