NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	CASE NO. 50
-and-	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 50

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 when it suspended the Claimant, Brian O'Neill, for ten (10) days by notice dated July 24, 1980.
>
> (b) The Claimant shall be compensated for the time held out of service."

The Claimant, Brian O'Neill, entered the Carrier's service on August 2, 1976. On June 16, 1980, the date of the incident giving rise to this claim, the Claimant was working as a track foreman at the Carrier's Paoli subdivision. By notice dated June 20, 1980, the Carrier instructed the Claimant to appear for a trail on July 11, 1980, in connection with the following charge:

> "Unauthorized absence from work on June 16, 1980, in that you were absent from work on the above aforementioned date, and did not properly inform your supervisor of your absence."

The Carrier held the trial as scheduled. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated July 23, 1980, the Carrier informed the Claimant that it had found him guilty of the charge and assessed him a penalty of ten days suspension.

The Carrier maintains that the record contains sufficient evidence to support its finding that the Claimant's absence on June 16, 1980 was unauthorized, and that the ten-day suspension was the appropriate penalty under an absence control program then in effect. The Organization does not dispute that the Claimant failed to phone in his absence to the Carrier prior to the start of his shift on June 16, 1980. However, the Claimant maintains that the late call was unavoidable because his alarm did not go off due to a power failure in his home. The Organization also maintains that the absence control program does not contain a

requirement that an employee phone in before the start of his shift, and that it was improper for the Carrier to suspend the Claimant when it failed to take any disciplinary action against another employee who also failed to phone in his absence prior to the start of the same shift.

The record reveals that on June 16, 1980, an absence control program was in effect between the Carrier and Organization. According to its provisions, a covered employee who is absent from work without permission or legitimate cause will receive a written warning. An employee who is guilty of a second unauthorized absence within a 12-month period shall be subject to a ten-day suspension. The agreement contains no specific provision that employees must notify the Carrier of their absence prior to the start of their shift. The record further reveals that on the morning of June 16, 1980, the Claimant's alarm did not ring because his electricity was shut off duirng that night. The Claimant was scheduled to work a shift that day that began at 7:00 A.M. Upon awakening, the Claimant immediately called the secretary at the Carrier's Paoli office and informed her he would not report for work that day. Carrier records place the time of the phone call at 7:48 A.M. The record also reveals that prior to June 16, 1980, a supervisor at Paoli, John Worster, spoke to the Claimant three times about his absenteeism and issued him two written warnings and one letter concerning his absences. Worcester testified that

he personally hand-delivered one of these warnings, and sent the other two by Certified Mail, which came back unclaimed.

This Board has concluded that the Claimant's absence on June 16, 1980 was unauthorized within the meaning of the term as used in the absence control program, and a ten-day suspension is warranted. A requirement that an employee notify the Carrier of his absence before the beginning of his shift is an implicit requirement of the program, and the Claimant knew of, or should have known of, this requirement. Although the Board is sympathetic to the plight of the Claimant, which was caused by the power failure, the program contains no provision which would excuse such an absence. The Claimant had received more than the number of warnings required by the program prior to receiving the suspension. Accordingly, this Board must deny the claim.

AWARD: Claim denied.

L. C. Hriczak, Carrier Member

W. E. LaRue, Organization Member

(DISSENTING)

Richard R. Kasher
Richard R. Kasher, Chairman
and Neutral Member

March 10, 1984
Philadelphia, PA

2406-50

DISSENT OF THE EMPLOYE MEMBER
AWARD NO. 50
PUBLIC LAW BOARD NO. 2406

The Board has erred in Award No. 50 when expanding the current Agreement to include language which is neither present nor intended when stating, "A requirement that an employee notify the Carrier of his absence before the beginning of his shift is an implicit requirement of the program...".

The Agreement is specific and is not subject to Carrier's interpretation or unilateral change.

Section 3 of the Public Law Board No. 2406 Agreement, signed April 30, 1979, provides as follows:

> "3. The Board shall confine itself strictly to a decision in each of the disputes specifically set forth in paragraph 2 above, shall not have jurisdiction of disputes growing out of requests for change in rates of pay, rules and working conditions, and shall not have authority to change existing agreements governing rates of pay, rules and working conditions, and shall not have the right to write new rules."

Therefore, this Board has erred in its decision of Award No. 50 of the Public Law Board No. 2406.

W E LaRue

William E. LaRue, Employe Member
Public Law Board No. 2406