

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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* Case No. 55
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* Award No. 55
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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 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:

"The Carrier violated the effective agreement dated May 19, 1976 on October 30, 1980 by arbitrarily and capriciously dismissing Claimant Theodore Vines.

Claimant Vines shall be reinstated with seniority unimpaired and compensated for all wages lost suffered on account of this dismissal."

Background Facts

During the period of August 17, 1980 through September 14, 1980 the Carrier's police force in conjunction with the Baltimore City Police Department and the Federal Drug Enforcement authorities cooperated in an effort to cease the carriage of narcotics on the Carrier's trains between Baltimore, Maryland and New York, New York.

As a result of information and surveillance Carrier police officials allegedly observed Mr. Theodore Vines, hereinafter the Claimant, who was employed by the Carrier on September 10, 1980 as a Cook, disembark a train in Baltimore Station. The Claimant had been identified as an individual who was carrying a controlled dangerous substance. The Claimant was allegedly followed as he took a circuitous route through the station and as he crossed over certain tracks and proceeded toward steps leading to Charles Street. A Carrier police officer, who was in uniform, approached the Claimant and drew his revolver. At this juncture, the Claimant allegedly removed several glassine bags from his person and threw them over the bridge at the 1500 block of North Charles Street. The location from which the bags were allegedly thrown is not on Carrier premises.

The Claimant was arrested at the spot. While he was being held by one of the officers, another officer searched

the area where the bags were thrown and retrieved several bags which were suspected to contain heroin and one vial/bottle which was suspected to contain methadone.

Subsequent laboratory reports of the bags verified that heroin was contained therein and a laboratory report on the bottle/vial established that it contained methadone.

On October 16, 1980 the Claimant attended an investigation regarding the charge that on September 10, 1980 at 12:45 a.m. while on Carrier property in the vicinity of Penn Station, Baltimore, Maryland he had been observed by Carrier Police to be in possession of controlled drugs.

As a result of that investigation the Carrier determined that the Claimant was, in fact, guilty of the charges and he was, thereafter, dismissed from service.

The Claimant's dismissal is presented to this Board for adjudication.

Position of the Carrier

The Carrier contends that the Claimant was given proper notice of the investigation and that he recieved a fair and impartial trial. The Carrier further contends that the evidence established at the investigation clearly shows that the Claimant was guilty of violating Carrier rules.

The Carrier further contends that the violation of the rules was of a sufficiently serious nature so that the discipline of dismissal was neither arbitrary nor overly severe.

The Carrier contends that the Claimant's simple denial of possession of the vial of methadone or the glassine bags or heroin is no more than self-serving assertions and are not supported by any evidence in the record. The Carrier also contends that the fact that the Claimant was not convicted of criminal possession of narcotics in a court of law does not control the determination of this Board.

Accordingly, the Carrier requests that the claim be denied.

Position of the Organization

The Organization first contends that the Claimant was not served with proper notice of the investigation. In these circumstances, the Organization contends that the Claimant's case should be sustained. The Organization also contends that the alleged offense occurred on September 10, 1980 and that the notice of charge was not delivered to the Claimant's residence until September 29, 1980 or some nineteen days after the date that the Carrier allegedly had

notice that the Claimant had committed an infraction. The Organization contends that the Schedule Agreement provides in Rule 71(a) that the Carrier is obligated within fifteen days of the date of an alleged offense to give the Claimant notice in writing of the exact charge on which he is to be tried. In light of the fact that the Carrier exceeded the time limits, the Organization contends that the claim should be sustained.

The Organization also argues that the Claimant was not on Carrier property at the time of his arrest; and that even if he was guilty of the charges, the Carrier has no basis for prosecuting the Claimant in view of the fact that he was not on duty or on Carrier premises.

The Organization also contends that the claim should be sustained in view of the fact that the Claimant was not in possession of controlled drugs; and that at a judicial proceeding charges against the Claimant were dropped on the basis that he was not in possession of controlled drugs/substances.

Finally, the Organization contends that the Carrier has not met its burden of proof as it has not been able to establish that what the Claimant allegedly threw over the bridge was, in fact, controlled drugs/substances.

The Organization also contends that Carrier police per-

sonnel engaged in an act of entrapment; and that on this basis this Board should sustain the claim and return the Claimant to service with seniority unimpaired and with no loss of pay or benefits.

Findings and Opinion

The Organization has raised two procedural objections. First, the Organization contends that the Claimant did not receive adequate notice of the investigation. This argument is essentially refuted by the fact that the Claimant appeared at the investigation with a duly authorized representative of the Organization and it is clear that both the Claimant and the Organization representative were fully prepared to proceed and address the charges. The record also reflects that the Claimant and his Organization representative were given an opportunity to confer and determine whether they wished to proceed with the investigation. They indicated that they were. It is too late at this point for the Organization to contend that the Claimant was denied due process at the investigation allegedly due to lack of adequate notice.

Secondly, the Organization has contended that the Carrier did not timely charge the Claimant. Although there

was some difficulty in transmitting the notice of charge to the Claimant, the record reflects that the Carrier issued a notice of hearing to the Claimant on or about September 12, 1980. It appears from the record that the Carrier made a good faith effort to deliver this notice to the Claimant at his last known address. There is no showing in the record that the failure to deliver the notice timely was due to a default by the Carrier. It was due, in all likelihood, to the inability of the Claimant to be available at his last known address for the receipt of regular and/or certified mail. In these circumstances, this Board rejects the Organization's procedural objection.

Turning to the merits of the case, it is clear that the Claimant proceeded across Carrier property and on or near Carrier premises disposed of something in his possession. The Claimant has offered no reasonable explanation regarding his actions on the day in question. He has not established that what he threw over the bridge was anything other than the heroin and methadone which were immediately retrieved by drug enforcement officers.

This Board finds that the Carrier has sustained its burden of proof to the extent that it has established that the Claimant disposed of glassine bags of heroin and a vial of methadone from the North Charles Street Bridge.

This Board has previously held that possession of narcotics on or about Carrier premises represents the type of offense which the Carrier can consider subject to severe discipline. We are addressing cases in the transportation industry. All would agree that the possession and/or use of narcotics by employees engaged in the transportation industry represents a serious offense and is subject to strict and stern policing.


The rules of evidence in our criminal justice system are much more stringent than they are in the labor arbitration forum. The Carrier, unlike prosecutors in the criminal justice system, is not obligated to prove beyond a reasonable doubt that the Claimant engaged in prohibited and/or illegal activities.

This Board finds that the Carrier has met its burden of proof and that the Claimant was justifiably dismissed from service for the infraction of Carrier Rules.

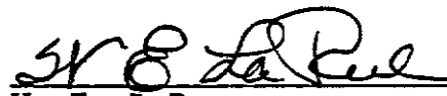
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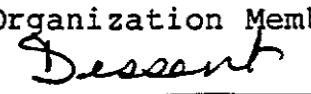
Accordingly, the claim will be denied.

AWARD: The claim is denied.




L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member


Dessant



Richard R. Kasher,
Chairman and Neutral Member

August 3, 1985
Philadelphia, PA