

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)
-and-
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 57
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* Award No. 57
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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:

"The Carrier violated the effective Agreement dated May 19, 1976 on November 25, 1980, by unfairly and without just cause dismissing Claimant Raymond Maddox, Jr.

Claimant Maddox shall be reinstated to service with seniority and all other benefits unimpaired, and be fully compensated for all wages lost. All reference to the three (3) charges shall be expunged from his record."

Background Facts

Mr. Raymond Maddox, Jr., hereinafter the Claimant, entered the Carrier's service on September 1, 1978. At the time that the Claimant was dismissed from service he was employed as a Machine Operator on the Carrier's Track Laying System.

On October 30, 1980 the Claimant was issued three notices to appear for investigations regarding certain alleged offenses. The first notice concerned the Claimant's alleged absence from work on July 8, August 11, and August 21, 1980. The notice alleged that the Claimant was in violation of the parties' Absenteeism Agreement.

The second notice charged the Claimant with having been boisterous, discourteous, using vulgar language and threatening Supervisor M. Platz, on September 18, 1980.

The third notice alleged that the Claimant, on September 19, 1980, had left the job site without permission.

The three notices were consolidated for hearing and on November 17, 1980 investigations of all charges were held.

On November 25, 1980 the Carrier issued notices of discipline in all three cases. The Carrier concluded that the Claimant was guilty of the charges in all three instances and as a result dismissed the Claimant from service.

The claims are now before this Board for adjudication.

Position of the Carrier

The Carrier contends that there is substantial evidence of probative value, including the Claimant's own admissions, which support a finding that the Claimant was guilty as charged. The Carrier relies upon the Claimant's testimony which, in the Carrier's opinion, establishes that he was guilty of absenteeism without excuse, profane and threatening language, and absenting himself from the job site without permission. Accordingly, the Carrier contends that it has met its burden of proof and that it properly disciplined the Claimant for infractions of rules.

The Carrier further contends that the Claimant appeared at the hearing with competent representation, that the Claimant acknowledged that he had received proper notice, and that neither the Claimant nor his Organization objected to any of the hearing procedures and affirmed that the hearing had been conducted in a fair and impartial manner.

Accordingly, the Carrier requests that the claims be denied.

Position of the Organization

The Organization contends that the Claimant was denied a fair and impartial investigation because the Carrier did not hold three separate trials for the charges involved. In further support of its contention that the Claimant did not receive a fair and impartial investigation, the Organization points out that the first investigation consumed sixteen (16) minutes; the second investigation consumed twenty-two (22) minutes; and the third investigation consumed seven (7) minutes. The Organization argues that the average time of each investigation was fifteen (15) minutes and that such statistics establish that the Carrier has failed to meet the test of Rule 68 which provides that employees shall not be suspended nor dismissed from service without a fair and impartial trial.

Additionally, the Organization contends that the Carrier violated Rule 71(a) as it did not advise the Claimant within fifteen (15) days of the date of the alleged offenses of the notices of investigation. The Organization argues that, as the notice of investigation was not given within the fifteen (15) day time limit provided in Rule 71(a), the claim should be allowed.

The Organization also disputes the facts in the record. The Organization contends that the Carrier has not met its

burden of proving that the Claimant was absent on the days alleged; that the Carrier has not shown that the Claimant's use of foul language was anything more than shop talk and/or provoked by Supervisor Platz; and that the Claimant demonstrated good medical excuse for absenting himself from the job site on September 19, 1980. In light of these facts, the Organization contends that the claims should be sustained on their merits, that the Claimant should be restored to service with seniority unimpaired, and, he should be made whole for all loss of pay and benefits.

Findings and Opinion

This Board is not persuaded by the Organization's contentions that the Claimant did not receive a fair and impartial investigation. First, we note that the Claimant was put on specific notice regarding the charges which were being levied against him. Each notice of investigation was sufficiently specific and there is no showing that the Claimant was lacking in knowledge regarding the charges. Additionally, the notices of investigation indicated that the investigations would be held on the same day. Neither the Claimant nor his Organization representative objected to the consolidation of the investigations and, more impor-

tantly, there is no showing that the consolidation of the investigations acted to prejudice the Claimant's ability to present evidence in his own behalf or to challenge the evidence presented by the Carrier. The fact that the investigations only consumed a few minutes does not, in and of itself, result in a finding that the investigations were less than fair and impartial. Clearly, the reason that the investigations were as brief as they were was due to the fact that the Claimant essentially admitted significant elements in the charges and the Carrier could justifiably determine not to extend the investigations unnecessarily. Accordingly, this Board does not find that the Claimant was deprived of his rights to procedural due process during the conduct of the three consolidated investigations.

In addressing the question of whether the Carrier was untimely in issuing notices of investigation, there is evidence and argument in the record which would establish that at the time that these notices were issued that the parties had not generally complied with the time limits in the agreement. Although subsequent to the date of the notices of investigation in this case the parties, apparently, began more strictly complying with the time limit requirements, at the time that these charges were noticed for investigation the parties had adopted a less strict approach, from both

the Carrier's and the Organization's perspectives, to the processing of charges and appeals. In any event, there is no showing that the Claimant objected to receiving the notices of investigation when he did or that there was any lack of procedural due process as a result of the timing of the issuance of the notices of investigation.

In this Board's opinion the Carrier has presented sufficient probative evidence regarding each of the alleged charges. In our view, it is not necessary to review the claims regarding violation of the Absenteeism Agreement or the Claimant's being absent from the job site on September 19, 1980. This Board believes that the seriousness of the second charge, the charge which involved the Claimant's alleged threatening and profane language on September 18, 1980, represents sufficient cause to find that the Carrier acted justifiably when it disciplined the Claimant by dismissal.

At the opening of the trial regarding the charge that the Claimant had involved himself in a discussion with Supervisor Platz on September 18, 1980 which was boisterous, discourteous and involved the threats of violence, the Conducting Officer asked the Claimant to relate in his own words the circumstances surrounding the incident in Ivy City. The Board notes that the Carrier did not introduce

any evidence at this point in time and so the Claimant was entirely free to describe the incident in his own words without any need or sense of being self-defensive. The Claimant testified, candidly, as follows:

"Well, that one Friday I worked from 2:00 in the morning til 10:00 at night and he never paid me for it and he said that he would see that I get paid for it and he never did, so when I go to ask him about -- he told me to go see my foreman, my foreman had been bumped. He (Mr. Platz) said don't worry he (Mr. Maddox's foreman) is coming back. I said, 'No he's not, I saw him in a Division gang.' And he (M. Platz) said that my foreman will be back for me to wait. So I told him I was going to knock his teeth out. And that wasn't a threat either. It was a promise, too."

The Carrier's Conducting Officer then asked the Claimant whether he realized that he had made a serious threat and a discourteous statement and that he could have been disciplined for that. The Claimant responded that he did not realize that because at the time he was worried about his money.

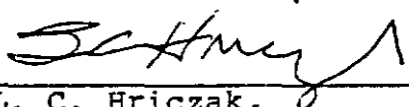
Subsequently in the investigation Supervisor Platz testified that the Claimant, when he experienced trouble in getting promptly paid, became loud and boisterous. Supervisor Platz then testified that the Claimant called him profane names and stated that he (Platz) was a "lazy son of a bitch, (and that) you're going to get yours". Platz then

testified that the Claimant told him to "Come out in the parking lot and I'll belt you in the mouth".


There is no question that the Carrier has presented substantial and probative evidence which demonstrates that the Claimant was profane, boisterous and threatening. The essential elements of the confrontation are admitted by the Claimant. He may well have been distressed by what he viewed as slow processing of his paychecks but the verbal attack which he directed to Supervisor Platz was certainly not provoked and clearly was not justified in any industrial setting.

In this Board's view the Carrier has clearly proven its case. The Claimant has not shown any sufficient mitigation for his actions. In these circumstances, this Board must deny the claim.


AWARD: The claim is denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher,
Chairman and Neutral Member

August 3, 1985
Philadelphia, PA