

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. 60
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* Award No. 60
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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:

"Mr. J. L. Perkins be restored to service, with seniority rights and all other privileges intact and he be compensated for all wage loss resultant from dismissal."

The Claimant, J. L. Perkins entered the Carrier's service on February 26, 1975. On November 12, 1980 he was assigned to the position of Electric Traction (E/T) Helper on the Carrier's Baltimore Division. As a result of an incident on November 12, 1980 involving the Claimant and

Safety Engineer C. L. Matlack, the Claimant was removed from service at 11:25 a.m. and was so advised by letter of that date. By notice dated November 17, 1980 the Claimant was notified to attend an investigation on November 26, 1980 regarding the following charge:

"Violation Rule I Amtrak Rules of Conduct which reads in part: 'Employees will not be retained in service who are insubordinate ... quarrelsome'

Specification (1) - In that you were insubordinate to Safety Engineer C. L. Matlack on November 12, 1980 at approximately 10:30 a.m. in the vicinity of Baltimore Station.

Specification (2) - In that you were quarrelsome to Safety Engineer C. L. Matlack on November 12, 1980 at approximately 10:30 a.m. in the vicinity of Baltimore Station."

The investigation began on November 26, 1980 as scheduled and as Claimant Perkins and his representative were not present, the investigation was commenced "in absentia". Stenographer Sharon Douglass was questioned regarding her knowledge of the absence of Claimant Perkins and his representative D. J. Petrancuri. She related that she was told on November 25, 1980 that Safety Engineer Matlack and Inventory Control Clerk Brooks (2 Carrier witnesses) would not be available for the trial November 26, 1980. She was told to reschedule the trial and to notify Claimant Perkins and his representative which she did. She testified that later that same day she was told that the investigation would be held as scheduled on November 26 and to so notify

the Claimant and his representative. She reached the Claimant after repeated calls and he said that he had not received a formal notice but would be in the office as he had to sign for his unemployment check. Ms. Douglass stated that she left a message with Mr. Petrancuri's son. She testified she finally contacted Representative Petrancuri at 7:30 a.m. on November 26 and he stated he would arrive on the 10:19 a.m. train.

Safety Engineer Matlack testified regarding the Claimant's actions on November 12, 1980 which led to the Claimant's removal from service on November 12, 1980.

The Claimant arrived at the investigation at approximately 10:15 a.m., however, his representative had not arrived. At 10:40 the Hearing Officer postponed the investigation until arrangements could be made with the Claimant and his representative regarding the exact time and date they would be available for resumption of the investigation.

The investigation was reconvened and concluded on December 9, 1980 with both the Claimant and his representative present. The Claimant was found guilty as charged and was dismissed from the service of the Carrier by letter dated December 15, 1980.

The Claimant was charged with violation of Rule I, Amtrak Rules of Conduct which reads in part: "Employees

will not be retained in service who are insubordinate ... quarrelsome" and the specifications' charges that he was "insubordinate to" and "quarrelsome to" Safety Engineer C. L. Matlack on November 12, 1980 at approximately 10:30 a.m. in the vicinity of Baltimore Station.

Safety Engineer Matlack testified that on November 12, 1980 he and Inventory Control Clerk R. Brooks were in a car in the station area on the way to Edgebrook to inspect a rail pickup train. Mr. Matlack noticed several employees not wearing safety glasses, which is a violation of safety rules. He called the violation to the employees' attention and they complied immediately. He further testified that while driving around a barricade he noticed an individual (later identified as Claimant Perkins) wearing no safety glasses or hard hat. Mr. Matlack stated that he motioned to the Claimant to wear his hard hat and goggles and that the Claimant did not comply. Mr. Matlack stated that he pulled over and that he and Mr. Brooks got out of the car and approached the Claimant. Mr. Matlack testified that he identified himself to the Claimant and asked the Claimant who he was and where his glasses were, and that the Claimant replied "he didn't know, leave him alone because he had an attitude today". Mr. Matlack testified that the Claimant started to walk away and he told him not to walk away while he was talking to him. Mr. Matlack testified that he asked

the Claimant his name, occupation, and supervisor's name and that the Claimant, using profanity, replied "I have an attitude, just leave me alone". Mr. Matlack testified that he warned the Claimant that he was getting himself in trouble and again asked him for his name. The Claimant finally gave his name and stated that he worked as a lineman in the E. T. Department; he again stated he had an attitude and did not want to be bothered by anyone. The matter was then discussed with the Claimant's supervisor and it was decided to remove him from service.

Inventory Control Clerk Brooks testified at the investigation on December 9, and his testimony corroborated that of Mr. Matlack. He testified that the Claimant was unresponsive to questions or instructions, used profanity, and told Messrs. Matlack and Brooks to "leave him alone". Mr. Brooks testified that he personally asked the Claimant to get his hard hat and glasses and that the Claimant just walked away.

The Claimant, at the investigation, denied he used profane language or was disrespectful to Mr. Matlack. However, the testimony of Mr. Matlack is corroborated by the testimony of witness Brooks and the testimony of both successfully withstood cross-examination.

The Organization contends, as bases for requesting that the discipline be removed, that the Carrier failed to accord the Claimant a fair and impartial trial; that there was

hostility on the part of the Hearing Officer; that the Carrier did not establish the Claimant's guilt beyond the question of a doubt; and, that the discipline was excessive.

In support of its contention that the Carrier failed to afford the Claimant a fair and impartial hearing, the Organization asserts that the commencement of the hearing on November 26 in the absence of the Claimant and his representative and the recessing on that date and resumption on December 9, in some manner affected the impartiality and fairness of the investigation. The Board does not agree that the recessing and later resumption of the investigation rendered the hearing less than fair and impartial. In fact, the procedural deficiencies, if any, were removed by the rescheduling of the hearing on December 9 at which time all witnesses and Claimant Perkins and his representative were present. All witnesses were subject to full cross-examination and the evidence submitted at the November 26 hearing was subject to full review and challenge.

Another basis advanced by the Organization for its contention that the Claimant was not afforded a fair and impartial hearing is the fact that on November 12, 1980 he was removed from service pending investigation. The Organization asserts that a rule violation is not considered a major offense or gross misconduct. However, the Claimant was not charged simply with a rule violation, he was charged

with insubordination. The Claimant, when questioned by a supervisor possessing apparent and actual authority, regarding his failure to wear safety glasses and a hard hat, refused to answer the supervisor's questions and directed profane remarks to the supervisor. Withholding the Claimant from service under these circumstances was not improper nor did it detract from the fairness or impartiality of the hearings.

The Organization also contends that the transcript of the hearing shows hostility on the part of the Hearing Officer. The transcript shows that the Hearing Officer was fulfilling his responsibility to conduct an orderly investigation. The transcript shows that twice during the investigation the Hearing Officer granted recesses so that representative Petrancuri could caution and correct the Claimant regarding his conduct. The Board does not construe the Hearing Officer's actions as hostility, rather a fulfillment of his responsibility to conduct an orderly, and fair and impartial investigation.

The Organization also contends that the Carrier did not prove beyond the question of a doubt that the Claimant was guilty of all of the charges. In discipline cases this Board has not required the Carrier to prove infractions which would meet a standard of "beyond the question of a doubt". In this case, there is sufficient, substantial evi-

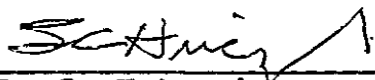
dence of probative value to establish the Claimant's guilt of the charge.

The Organization also contends that the discipline of dismissal was overly severe. As the Board has already found, the Claimant's guilt of the charge is established by the evidence produced at the hearing. The charge of insubordination and being quarrelsome to a supervisor is extremely serious misconduct and clearly merits discipline. Here the Claimant's offense was compounded because he was insubordinate while being questioned regarding his failure to comply with safety rules.

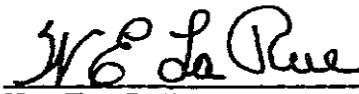
The Claimant's past record shows that in October of 1980 he was disqualified from the position of lineman because of his violation of a safety rule. The record also shows that in Award 22049 of the Third Division of the National Railroad Adjustment Board, the Board found that the discipline assessed the Claimant was excessive and reinstated him to service without pay for time lost and with seniority unimpaired. The Board in its Award further stated: "Claimant is cautioned that while this Board is acting to reinstate him we in no way condone his actions and any repetition will justify his dismissal". The Claimant's actions in this case are sufficiently similar to his actions in the case involved in Award 22049 to be considered repetitive.

This Board finds that the Claimant's guilt of the charge was established in a fair and impartial trial, that the charge was serious, and that the discipline assessed was proper and not excessive. The claim therefore will be denied.

AWARD: Claim denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher,
Chairman and Neutral Member

February 28, 1985
Philadelphia, PA