

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 64
AWARD NO. 64

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 Section 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:

- "1. The Carrier violated the effective Agreement dated May 19, 1976 on January 26, 1981, by unfairly and unjustly suspending Claimant George Allen for ten (10) days.
2. The Carrier be required to compensate the Claimant for all wage loss suffered and expunge the matter from his Record."

Mr. G. L. Allen, hereinafter referred to as Claimant, was employed by Amtrak on June 11, 1979, as a Trackman on the

Carrier's Philadelphia Division. At the time of the incident here involved he was working as a Trackman on the Philadelphia Division.

By letter dated December 12, 1980, the Claimant was notified to attend a trial on January 13, 1981, in connection with the following charge:

"Alleged violation of Rule 'I' of Amtrak Rules of Conduct that part which reads, 'Employees will not be retained in service who are...dishonest.' Specification a) In that you gave false information to Foreman Lionel Grasso in reference to your hours worked during the week of 11/24/80."

The trial was held as scheduled. The Claimant and his duly authorized representative were present, indicated a willingness to proceed and were permitted to cross-examine Carrier's witness, make statements and present evidence on behalf of Claimant.

Claimant was notified by letter dated January 26, 1981, that he had been assessed discipline of "10 days suspension."

Claimant appealed this matter which has been progressed through the highest officer of the Carrier designated to handle such matters.

The record in this case establishes sufficient evidence to conclude that the Claimant attempted to convince his Foreman, who had just bumped into that position, that he (the Claimant) had worked a full 40 hour week, when in fact he had not worked Tuesday, November 25, 1980. The Carrier could properly decide that the Claimant's attempt to falsely benefit by the confusion

generated by a new Foreman's entry into the position was a violation of Rule "I" which prohibits dishonesty.

The fact that subsequent verification by Foreman Grasso of the Claimant's absence avoided the improper payment for time not worked does not absolve the Claimant. He attempted to claim pay to which he had no entitlement, and his failure to receive an improper windfall does not detract from the Carrier's evidence.

Additionally, the Carrier's evidence is not weakened in this case because it could not obtain corroborative testimony. The testimony of Foreman Grasso was direct, eyewitness testimony and cannot be categorized as mere supposition or suspicion. Thus, no corroboration was necessary if the Carrier chose to credit the Foreman's testimony and discredit the testimony of the Claimant.

Finally, the Claimant's allegation that this Foreman was "out to get him fired one way or another" is unsupported and loses all of its strength in view of the fact that the Claimant chose not to question Foreman Grasso regarding any alleged personal animosity although he was offered adequate opportunity to raise any such question.

Although there may be some confusion in the appeal correspondence between the parties regarding the week in which the Claimant was absent from work for one day, the record reflects that at the investigation the Claimant clearly knew which day he did not work, that that day was proximate to the

inquiry from Foreman Grasso, and that Foreman Grasso's testimony establishes that the Claimant sought to be paid for that day.

Accordingly, the claim will be denied.

AWARD: CLAIM DENIED




L. C. Hriczak
Carrier Member



W. E. LaRue
Organization Member

dissent



Richard R. Kasher
Chairman and Neutral Member

September 28, 1984
Philadelphia, PA