

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 2
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 2
	*	

Public Law Board No. 3038 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:

- "1. The Carrier has failed to support their charges when assessing discipline of 30 working days suspension to Claimant Harry L. Mullins, Machine Operator, without notices of the prescribed charges.
2. The Claimant now be exonerated of all charges and discipline assessed and be allowed the remedy of Rule 74(d) of the current Schedule Agreement."

Claimant Harry L. Mullins was employed by the Carrier as a Machine Operator headquartered at the TLS camp facilities in Elkton, Maryland, on June 5, 1980. On that date there was an

altercation between Claimant and his foreman. By letter dated June 6, 1980, the Claimant was directed to appear for a formal trial on June 17, 1980, concerning his alleged violation of Rules I and J of the Carrier's Rules of Conduct in connection with this incident. The trial was postponed until June 25, 1980, by mutual agreement of the Carrier and the Organization. Claimant was present at the trial and was accompanied by a duly designated representative of the Organization. By letter dated June 30, 1980, Claimant was notified that he was being assessed thirty (30) calendar days suspension as a result of his alleged violation of Rules I and J.

The pertinent portions of Rules I and J cited in the Carrier's notice are:

- "I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious..."
- "J. Violence, fighting, horseplay, threatening, or interfering with other employees while on duty is prohibited."

The Organization argues that the notice to Claimant did not comply with Rule 71 of the Schedule Agreement in that it was sent to the wrong address. At the trial, Claimant stated that he had not received the letter containing notice of the trial. He did get a copy of the notice the day before the trial but this came as a result of his calling the Carrier, learning they had sent a notice, and arranging to get a copy.

The Carrier asserts that the notice was sent to Claimant's address of record and that if any changes occurred it was Claimant's

responsibility to notify the Carrier. Claimant stated at the trial that he did so twice. The Carrier denies this. Despite this dispute, the fact is that Claimant, his designated representative, and his witness, were all at the trial, that Claimant stated that he was prepared to proceed, and that no request was made for postponement. Under the circumstances, this Board finds that actual notice was given and that Claimant suffered no prejudice. He and his representative were aware of the charge against Claimant and were well prepared to defend his interests.

The record clearly supports the position taken by the Carrier that Claimant attacked his foreman without provocation, forcing him to the ground. Even Claimant's witness, who stated that the foreman tripped, said


"Well, I saw /the foreman/ backing up and he tripped over the rail, and at that time, me and /another employe/ grabbed /Complainant/."

* * * * *

"Because at the time /Claimant/ was angry and I knew what kind of a mood /Claimant/ was in. To keep him from doing anything he might regret later, we just kind of grabbed hold of him."

If this account offered on behalf of Claimant is credited, it shows, at the least, Claimant acted in a bellicose and threatening manner to his foreman. A suspension of thirty (30) days for the actions involved in this case is not an arbitrary or capricious imposition of discipline. Accordingly, this claim must be denied.

AWARD: Claim denied.


L. C. Hriczak, Carrier Member


W. E. LaRue, Organization Member

June 1, 1982
Philadelphia, PA.


Richard R. Kasher, Chairman