

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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* CASE NO. 4
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* AWARD NO. 4
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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 dismissal of Trackman Eugene Tyler for the alleged altercation and fighting in violation of Rule I of the Amtrak Rules of Conduct was without just and sufficient cause, the decision being based on charges not supported in the trial transcript.

(2) The dismissal of Claimant Tyler was arbitrary and capricious, and the Claimant was not afforded a fair and impartial trial.

(3) Claimant Tyler's record be cleared and exonerated of all charges.

(4) Claimant Tyler shall be reinstated to service immediately without loss of seniority and vacation rights and shall be compensated for loss of straight time and punitive time wages.

(5) Claimant Tyler shall be granted all benefits and privileges from the date of dismissal until he is reinstated."

The Claimant, Eugene Tyler, entered service in December, 1975. On July 29, 1981, the Claimant was a Trackman working out of Old Saybrook, Connecticut. By letter dated July 29, 1981, the Carrier removed the Claimant from service effective immediately for alleged violation of Amtrak Rules of Conduct, particularly Rule I. By notice dated July 31, 1981 the Carrier instructed the Claimant to attend a trial scheduled for August 7, 1981, in connection with the following charge:

"To determine your responsibility, if any, in connection with the altercation and fighting at approximately 8:10 A.M., on Wednesday, July 29, 1981 involving you and Mr. Patrick O'Keefe at Groton, Connecticut while you were on duty as a Trackman."

The trial took place on August 7, 1981. The Claimant was present and was represented by a duly designated representative of the Organization. By letters dated August 18, 1981 and August 19, 1981, the Carrier informed the Claimant that it had found him guilty of the charge and it had dismissed him effective immediately. By letter dated September 1, 1981, the General Chairman, appealed the dismissal of the Claimant. The Carrier

contends that it did not receive this letter until it was hand delivered by the General Chairman on September 30, 1981. By letter dated October 14, 1981, the Carrier denied the appeal. By letter dated December 11, 1981, the Organization appealed the dismissal to the Carrier's Assistant Vice President Labor Relations. By letter dated January 19, 1982, the appeal was denied on its merits.

The Carrier initially contends this Board lacks jurisdiction to hear the claim. The Carrier claims that it did not receive the Organization's appeal of the Claimant's dismissal until September 30, 1981, forty-two days after the notice of dismissal issued on August 18, 1981. The Carrier maintains that this delay violates Rule 74 of the applicable Agreement. The Rule states that an employee must appeal an adverse decision concerning discipline within fifteen days. The Organization claims to have mailed the required notice on September 1, well within the prescribed time limits. In light of the Organization's contention, and the Carrier's willingness to respond to the merits of the claim, this Board has determined that there exists sufficient doubt as to whether the claim was untimely filed. Accordingly, the Board will consider the claim on its merits.

The Carrier contends that the trial record supports its position that the Claimant was guilty of misconduct as charged, in that he did fight with Assistant Track Supervisor O'Keefe on the morning of July 29, 1981. The Carrier also argues that

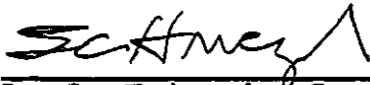
discharge is an appropriate penalty for fighting, and is particularly warranted for the Claimant because he was working at the time of the incident under the terms of a conditional reinstatement which resulted from a previous disciplinary infraction. In the letter containing the terms of the conditional reinstatement, the Organization and Claimant agreed that the Claimant "will serve a six month probationary period with the understanding that, if he becomes involved in any incident in which disciplinary action is warranted under applicable rules of agreement, he will be dismissed from the service of the Carrier without the benefit of trial procedure."

The Organization contends that the Carrier violated due process and did not give the Claimant a fair trial. The Organization further argues that the "scuffle" which took place between the Claimant and Assistant Track Supervisor O'Keefe on July 29, 1981 was caused by O'Keefe's abusiveness. The Claimant also contends that O'Keefe knocked him off balance, causing him to fall on O'Keefe.

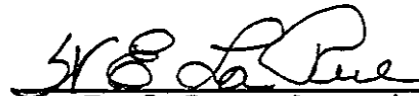
This Board has determined that the Carrier had proper grounds to discharge the Claimant. There exists sufficient record evidence to establish that the Claimant fought with O'Keefe. Although O'Keefe to some extent provoked the incident through his abusive behavior, it did not justify the Claimant's participation in a physical altercation. The appropriate recourse for the Claimant was to bring O'Keefe's behavior to the attention

of O'Keefe's superiors or the Claimant's Union representatives. Under the terms of the Claimant's probationary reinstatement, which were in force and effect at the time of this incident, the Carrier had the right to discharge the Claimant for "an incident in which disciplinary action is warranted under the applicable rules of this agreement." Tyler's decision to participate in the physical altercation with O'Keefe warrants disciplinary action. The Claimant's trial, which the Carrier was not obliged to hold, established that the Claimant was not totally free of blame for the incident. The Carrier, therefore, had the right to invoke the terms of the Claimant's probationary employment and discharge him.

AWARD: Claim denied.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member