

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 42

System Docket No. BMW-268D

STATEMENT OF CLAIM

Appeal of discipline of three-year disqualification as Foreman and ten-day suspension (five days actual and five days deferred) of Andrew Black.

FINDINGS

The Claimant was subject to an investigative hearing under the following specification:

It is alleged that you failed to attend to your duties as Track Foreman on January 12, 1996 while assigned to overtime snow duty on the Franklin Branch starting at 4:00 p.m. At 11:30 p.m. on that date you were observed by Roadmasters D. Rodricks and R. Hartley to be sitting in your truck at Norwood Central and not performing the essential snow removal duties for which you, and the entire gang under your supervision, were responsible.

It was noted by Roadmaster Rodricks at that time that none of the five (5) stations you were responsible for had been serviced and cleaned in an acceptable manner at that time. Additionally, it alleged that you failed

to answer radio calls from two Roadmasters, or to give progress reports during this "overtime" period.

Following the hearing, the Claimant was assessed a ten-day disciplinary suspension (five days actual and five days deferred) and permanent disqualification as a Foreman. During the claim handling process, the disqualification was modified to three years.

Review of the record demonstrates to the Board that the charges against the Claimant were fully proved. Once guilt was established, the Carrier was entitled to take into account the Claimant's disciplinary record to determine severity of penalty. This record included a previous five-day deferred suspension and a three-month disqualification as Foreman and Assistant Foreman.

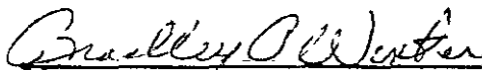
There is no merit in the Organization's contention that the Claimant was treated in a disparate manner in comparison to other crews assigned to snow removal at the same time.

A W A R D

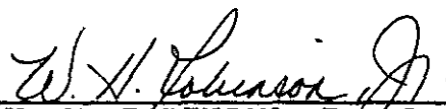
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 2/4/97