

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 61

System Docket No. BMW-437D

STATEMENT OF CLAIM

(a) Carrier's suspension of Claimant Robert Blocker was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Blocker shall have his record cleared of the alleged offense and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

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

It is alleged that on June 2, 2001 at approximately 9:00 a.m. at Fairmount Station you initiated an argument with Foreman Dennis Monahan about the vehicle being used to perform work that day.

Following the hearing, the Claimant was assessed a ten-day suspension.

The Claimant was assigned as a Truck Driver in a crew supervised by an Acting Foreman on Saturday, June 2, 2001. At the commencement of the shift, the Acting Foreman determined that the crew's assignment for the day did not require use of the truck regularly assigned to the Claimant.

Early in the shift, during a break caused by inclement weather, there was discussion initiated by the Foreman as to whether to retrieve the truck for the purpose of obtaining coffee for the crew. This was resolved when one crew member volunteered to walk to a nearby store for this purpose.

A full review of the record clearly shows that a brief but heated argument ensued between the Acting Foreman and the Claimant. The subject of the argument was the Claimant's assertion that it was his assigned duty to operate the truck and the contention by the Acting Foreman that he would determine what might be required. The discussion led the Acting Foreman to halt the crew's work and to call the Roadmaster. The Roadmaster appeared and reviewed the situation. He decided to assign the Claimant to another crew for the remainder of the work day, replacing him with another employee. The crew then resumed its assignment without further incident.

The Board is impressed by what did not happen. The question of use of the truck had become hypothetical, since coffee was available without its use. The Claimant did not refuse an order from the Acting Foreman, nor was he otherwise insubordinate. When

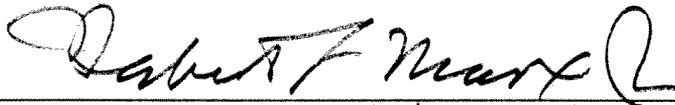
the Roadmaster appeared, he found the Acting Foreman "still upset" and the Claimant not "visibly agitated". The "argument" was without threat of violence.

There are references in the record to an incident occurring the previous day and the fact that the Claimant had asked permission to do a personal errand during the day in question. The Board does not find these aspects relevant to the action for which the Claimant is charged.

There was a heated exchange between the Claimant and the Acting Foreman. Evidence is lacking, however, that it was the Claimant who "initiated" the argument. Even assuming that he did so, the penalty is unduly harsh and was not warranted.

A W A R D

Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.



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



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B. A. WINTER, Employee Member



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RACHELLE A. MIELE, Carrier Member

NEW YORK, NY

DATED: April 21, 2003