

PUBLIC LAW BOARD NO. 5418

Case No. 80

Award No. 80

PARTIES

To

DISPUTE:

Brotherhood of Maintenance of Way Employees

-and-

Pan Am Railways, Inc.

STATEMENT OF CLAIM:

“I appeal to you the discipline case of Mr. Thomas R. Stevens Jr. who was dismissed, effective May 28, 2010 by Mr. J.J. Steiniger following a hearing allegedly charging Mr. Stevens with violation of Safety Rules PGR-C (para. 2,3,4) and PGR-1 (para. I). We disagree with Mr. Steiniger’s decision in this matter for several reasons.”

FINDINGS: This dispute arose as a result of the Carrier charging the claimant with the following offense:

“your responsibility, if any, in connection with the Incident(s) outlined below:

Violation of Safety Rules PGR-C, (para. 2,3,4), PGR-L (para. 1)

PGR-C (para.2,3,4) To remain in service, employees must refrain from conduct which adversely affects the performance of their duties, other employees of the public.

Any act of insubordination, hostility or willful disregard of the Company’s interest will not be condoned and is sufficient cause for dismissal.

Employees must conduct themselves in such a manner that their Company will not be subject to criticism or loss of good will.

PGR-L (para. 1) Employees who are dishonest, immoral, vicious, quarrelsome, and uncivil in deportment or who are careless of the safety to themselves or of others will not be retained in the service.

On Friday April 30th 2010 the Pan Am Railway police and Dover police were called by Amtrak to meet them at Dover station over a passenger that was not welcome on the train anymore. The train arrived at approximately 2150 hours into Dover station. This is where you were met by Captain Faulkner and Mr. Dave Nagy. The conductor on the Amtrak train stated that in the past you used your railroad Badge in order for you and others to ride the train. She informed Mr. Nagy and Captain Faulkner that there have been many incidents involving you being intoxicated on the train in the past. She has also received complaints from other

passengers about your behavior. It was never reported before because the conductor was unable to remember your name. On April 30th, 2010 when you got on the train and showed your Pan Am railways badge, the conductor recognized you and that is when she called the Dover P.D. and the Railroad P.D.”

Following a formal hearing that was held in absentia, the Carrier found the claimant guilty of violating the above cited rules, and assessed him discipline in the form of being dismissed from service effective May 28, 2010.

At the outset, the Organization asserts the instant case is procedurally defective. They contend the Carrier failed to comply with an alleged agreed upon postponement of the hearing, and held said hearing in absentia without the presence of the claimant or his representative. The Organization asserts that due to their receiving a short notice of the hearing, the Union representative called the Carrier's Personnel Director Engineering and requested a postponement of the hearing, to which they contend was agreed to by the Carrier. Conversely, the Carrier asserts that there was no request and/or agreement regarding a postponement, and directs the Board's attention to the fact that the record is devoid of any written confirmation of the alleged postponement.

The record clearly shows there are conflicting versions of what allegedly transpired, and the Board found no evidence in the record to resolve the question of the veracity of the involved parties. Therefore, while the Board prefers to review hearings that include the claimant's testimony; given the facts presented, we are satisfied that no rules of agreement were violated and that the hearing held in absentia was proper and conducted in a fair and impartial manner.

By way of background, the record shows that on the date cited, Pan Am Railroad and Dover police were called to the Dover Amtrak station to address a problem regarding an alleged unruly passenger. The Pan Am Police report showed that the person in question was the claimant, who was accompanied by his wife and granddaughter and her friend. The report shows the police officer asked the Amtrak Conductor (D. Searcy) what was the problem, wherein she proceeded to explain (as written in her 4-30-2010 Incident Report) that in the past she experienced intoxication issues on her train that involved the claimant and his friends. She told the officer that she had allowed the claimant's friends to ride with the claimant based on his railroad badge; however their subsequent actions (drinking) became disorderly and unruly to a point where she received complaints from other passengers. She also told the officer that she did not know the claimant's name, however on this particular trip she recognized him and told the officer that the claimant was no longer welcomed on the train, and proceeded to give him the reasons why.

In his report, the Pan Am police officer stated that he did not detect any odor of alcohol on the claimant's breath, and told him that he was free to go and that he would file an incident report. He also told the claimant that the conductor said that he is barred from using the train.

At the arbitration hearing, the claimant was forthright and admitted that he and his friends were drinking and that they, not he, had acted in a disorderly manner. While the Organization raised several pointed questions, one of which was why the Conductor did not file any prior "Passenger Incident Reports" ; however, that of itself does not negate the facts involved in this case. The Board found nothing in the record to discredit the Conductor's detailed information that she provided to the police officer or in her written report.

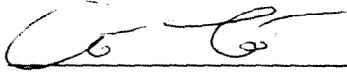
Based on the record, the Board did not find any mitigating factors that would have relieved him of his responsibility in this matter. Therefore, we deem the Carrier properly concluded that the claimant was guilty of the offense for which he was charged, and that they had proper justification for assessing discipline. However, without minimizing the seriousness of the offense, because it may warrant dismissal, the Board does take into account all of the factors brought forth in the record and concludes the assessed discipline in its present form is excessive.

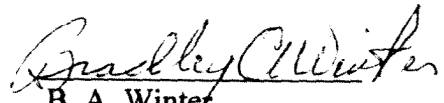
Therefore, the claimant is to be restored to service, but without any back pay for time lost. The claimant is to understand that the purpose of this Award is to give him another chance to be a safe and reliable employee, and the lengthy suspension without pay will emphasize the gravity of this situation. Also he should also understand that any future violations of the Carrier's rules on his part could result in the permanent termination of his service.

The Carrier is directed to implement the Award within 30 days of receipt.

AWARD: As specified in the findings.


Francis J. Domzalski
Neutral Member


A. F. Lamonto
Carrier Member


B. A. Winter
Organization Member

Dated 12/17/10