

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF THE ARBITRATION BETWEEN:

**THE NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)**

AND

**THE BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

)
) **AWARD NO. 4**

) **CASE NO. 4**

) **Discharge of**

) **Reginald Hawkins**

)

CLAIM:

1. The dismissal of Machine Operator Reginald Hawkins for his allegedly threatening and intimidating two other employees with bodily harm when he threw various objects at them and used profane and vulgar language towards them on May 4, 2000, was without just and sufficient cause and based on unproven charges (Carrier's File BMW-416D).
2. Machine Operator Reginald Hawkins shall now be ' . . . reinstated to his former assigned position of Machine Operator, that his seniority and all other contractual rights be restored unimpaired, that he be compensated for all wages and benefits he and his family have suffered since his removal from service, and that all charges be expunged from his personal record.'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds that the parties herein are both the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated August 5, 1997, and has jurisdiction over the parties and the subject matter.

The record shows that, on May 5, 2000, Grievant had an altercation with several co-workers, ending with him angrily throwing spikes and a spike maul in their direction. No one was injured, but the Grievant was charged with violating Carrier's Standards of Excellence (rules).

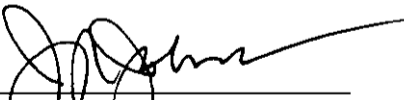
As the result of the Investigation held pursuant to the Agreement between parties, the Carrier found the Grievant guilty, and discharged him from the service.

Based upon the record, it is clear that grievant was guilty of inappropriate and potentially dangerous behavior in violation of the Carrier's Standards of Excellence. Discipline was appropriate. However, in view of the facts and arguments advanced by the Union, the Board agrees that dismissal was an excessive penalty in this case. Therefore, we will reduce the penalty to a 60-day suspension.

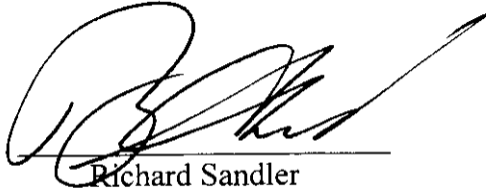
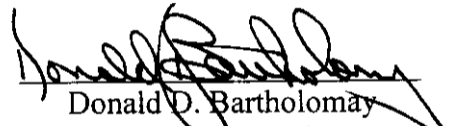
The Carrier has demonstrated, however, that Grievant also was prohibited from working during this period by a Restraining Order granted by the Courts at the request of a co-worker. Since a restraining Order was in effect during this period, Grievant could not have been permitted to work and, thus, suffered no wage loss as a result of the discipline that was overturned.

AWARD:

The Discharge is reduced to a 60-day suspension, without pay for time lost as discussed in the Findings. Carrier is ordered to reinstate the Grievant to service if, within 60 days of the date of this Award, Grievant applies to the Carrier to return to work, and produces evidence that the restraining order has been lifted.



James R. Johnson
Neutral Member


Richard Sandler
Carrier Member
Donald D. Bartholomay
Employee Member

Dated: 7/29/03