

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF ARBITRATION BETWEEN:

THE NATIONAL RAILROAD PASSENGER	)	
CORPORATION (AMTRAK)	)	AWARD NO. 14
	)	CASE NO. 14
AND	)	
	)	
THE BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYEES	)	

STATEMENT OF CLAIM

- (1) The dismissal (subsequent reinstatement to service with right to progress a claim for a monetary remedy) of Watchman Michael Terrell for allegedly playing music while on duty, entering into a verbal altercation and being insubordinate on April 4, 2004, was without just and sufficient cause.
- (2) Watchman Michael Terrell shall now be compensated for all wage loss suffered and have his personal record cleared of the incident.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are 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.

Grievant was employed by the Carrier as a Watchman in the Track Department, and had seniority dating from November 30, 1998, at the time giving rise to this claim.

Grievant was dismissed from service as the result of an Investigation held on April 30, 2004, but was reinstated unilaterally by the Carrier on a leniency basis on August 26, 2004. The Union preserved the right to appeal the matter, particularly the claim for wages lost.

The record reveals that Grievant was sitting in his vehicle near a contractor's crew working on the track. An Amtrak Signal Technician arrived to check the work of the gang, and noticed that the Grievant was playing music loudly on his radio. Upon approaching the gang, the gang leader asked the Technician if he could cause the Grievant to lower the volume, because it was distracting to the gang's work.

Rather than approach the Grievant directly and, in his words, "avoid a confrontation," the Technician called the Foreman on the radio and related the request to him. The Foreman then contacted the Grievant, and the radio volume was lowered immediately. If the matter had ended at that point, it is unlikely that a claim would now be before us.

However, it did not end there. According to the record, Grievant then walked to the gang and confronted them, and demanded, in less than appropriate language, who had called the Foreman rather than asking him themselves. A prolonged verbal altercation ensued.

The Watchman with the gang called the Foreman, reported the altercation in progress, and asked the Foreman to come to the work site. Foreman Osgood arrived at the scene and instructed the Grievant to report to the Senior Engineer at Menlo Park. The Grievant reported to the Senior Engineer and discussed the matter. He admitted playing his radio, but denied that it was loud. The Senior Engineer advised the Grievant that playing the radio while on duty was a violation of the rules, and asked him to sit down and write a statement of the facts as he understood them. If the Grievant had complied and written the statement, it is unlikely that this case would now be before us.

However, he did not comply. Instead, the Grievant claimed that he had a terrible headache and had to leave, which he then proceeded to do. As the result of a Formal Investigation, the Grievant was dismissed from the service, but was reinstated on a leniency basis, but without pay for time lost, by the Carrier in response to the Union's appeal of the case.

The record shows that the Grievant was on duty at the time of the incident, but was not assigned any specific duties. His Foreman testified that he told the Grievant:

Hey Mike, I know you don't have a lot to do there. Just turn your music down, sit in your car, read your rule book, read a book. Just don't draw no attention to yourself. When I need you, I'll call you. Just be there."

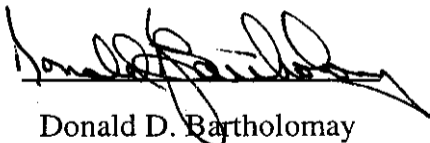
Therefore, if the Grievant had controlled his temper and simply turned the radio down, he would not have been subject to discipline for listening to the radio while on duty.

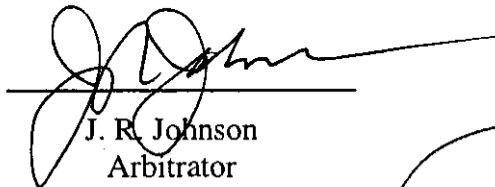
Discipline is appropriate, however, for his altercation with the contractor gang and his Foreman, and for his refusal to comply with the Senior Engineer's request for a written statement.

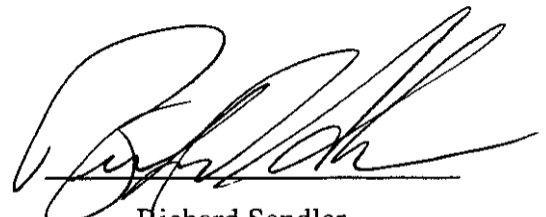
The Board finds that there was sufficient credible evidence in the record that the Grievant was guilty of the charges placed against him, and deserving of discipline. We will deny the claim

AWARD

The claim is denied


Donald D. Bartholomay
Employee Member


J. R. Johnson
Arbitrator


Richard Sandler
Carrier Member

Dated: 4/1/05