

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 241

STATEMENT OF CLAIM:

Appeal of the discipline, a sixty-day suspension, issued to Claimant W. White (System File NEC-BMWE-SD-4393D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as an Electric Traction Lineman Trainee, headquartered at Penn Coach Yard in Philadelphia, Pennsylvania.

By letter dated February 27, 2004, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant violated Amtrak's Standards of Excellence relating to Professional and Personal Conduct and to Safety, as well as Amtrak's Workplace Violence Policy, when the Claimant, while on duty, allegedly became involved in a verbal and physical altercation with a fellow employee in the Penn Coach Yard locker room. The investigation was conducted, as scheduled, on March 4, 2004. By letter dated March 18, 2004, the Claimant was notified that as a result of the investigation, he had been found guilty of the charges, and he was assessed a sixty-day suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier initially contends that there was no abuse of the hearing officer's discretionary authority to resolve issues of contradictory testimony. The Carrier points out that the Claimant categorically has denied any wrongdoing and has portrayed himself as an innocent victim who was violently attacked. The Carrier asserts, however, that the Claimant's actions were not those of a defenseless employee who truly was concerned for his own safety and welfare, or who was trying to get away from his assailant and defuse the situation.

The Carrier maintains that the Claimant was engaged in a face-to-face, back-and-forth, heated argument with a co-worker, William Lacomchek. The Claimant admitted that at the height of the confrontation, he provided Lacomchek with his home address and advised Lacomchek when he would be available to "settle the matter" with Lacomchek. The Carrier asserts that the Claimant's admitted behavior does not portray an employee who felt threatened or was attempting to defuse the confrontation. The Claimant's behavior can be viewed only as intimidating and extremely aggressive. The Carrier argues that although the record may leave open to debate the question of which employee was more aggressive and abusive, the record leaves no doubt that both employees' actions were improper in any setting and in violation of the Carrier's rules.

The Carrier then emphasizes that the record demonstrates that the Claimant was involved in a physical, as well as verbal, altercation with Lacomchek. The testimony of Lacomchek, which was supported by Brian McCarthy's testimony, indicates that the Claimant smacked Lacomchek in the face with enough force to knock off Lacomchek's glasses. The Carrier points out that prior to the investigation, Lacomchek had signed a

waiver admitting his guilt. At the time that Lacomchek testified, neither he nor McCarthy stood to gain anything by their testimony. The Carrier insists that under these circumstances, it was entirely appropriate for the hearing officer to find that Lacomchek's and McCarthy's testimony was more credible than that of the Claimant, particularly because the Claimant's contradictory testimony resulted from his vested interest in the outcome of this proceeding.

The Carrier goes on to argue that based on the overwhelming testimony and evidence in the record, there can be no dispute that the Claimant engaged in a verbal and physical altercation with Lacomchek. The record clearly demonstrates that the Claimant made degrading comments towards Lacomchek, and that the Claimant pursued Lacomchek in an aggressive and challenging manner even after Lacomchek had disengaged from the confrontation. Contrary to the Organization's assertion that the Claimant was innocent of wrongdoing and merely offered his home address as a means to end the confrontation, the Carrier maintains that the Claimant behaved in an intimidating and aggressive manner in pursuing Lacomchek and repeatedly offering to settle the matter after work or at his home; the Claimant's inappropriate behavior clearly violated the Carrier's rules.

The Carrier then addresses the Organization's argument that the Claimant was subjected to disparate treatment in this matter because Lacomchek was assessed a thirty-day suspension. The Carrier points out that both the Claimant and Lacomchek were offered a thirty-day suspension; Lacomchek chose to admit his inappropriate behavior prior to a formal investigation, while the Claimant chose not to admit his guilt and sign

the waiver that was offered to him. The Claimant has continued his refusal to acknowledge that his behavior was inappropriate, although he admitted to using disparaging comments towards Lacomchek.

The Carrier asserts that the Organization is attempting to demonstrate that the Claimant is innocent of wrongdoing based on the fact that Lacomchek threw a chair and because the Claimant sustained an alleged injury to his knee. The Carrier insists that it was the Claimant's conduct that resulted in Lacomchek throwing the chair. Although Lacomchek should not have reacted in this manner, it was the Claimant who made disparaging remarks and pursued Lacomchek while offering to settle the matter after work or at his home. The Carrier argues that Lacomchek's inappropriate behavior does not relieve the Claimant of guilt in this matter, and the Carrier cannot ignore the Claimant's refusal to accept any responsibility for his actions. The Carrier contends that under these circumstances, it was justified in assessing the Claimant a sixty-day suspension and there was no disparate treatment in this case.

The Carrier points out that the Organization's allegations are an attempt to draw the focus away from the Claimant's serious offenses. The record clearly supports the Carrier's finding of guilt, and there are no mitigating circumstances that require a reduction or removal of the discipline imposed. The Carrier emphasizes that it cannot condone the Claimant's actions, which clearly violated the cited Standards of Excellence and the Workplace Violence Policy.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Claimant was not the aggressor or the violent party during the incident at issue. As the witnesses testified, Lacomchek instigated this incident. The Organization asserts that Lacomchek lost all control of himself, and he threw a wooden chair across the room to where the Claimant was standing; the chair broke due to the force with which it was thrown. Lacomchek approached the Claimant in a threatening manner, pushed the Claimant about three times with his chest and once with his knee. Moreover, Lacomchek's knee came into contact with the Claimant's knee, causing an injury to the Claimant. The Organization asserts that Lacomchek backed off only after the Claimant stated that he would report the matter to the foreman; Lacomchek then told the Claimant that he would tell the foreman that the Claimant knocked off his glasses.

The Organization points out that while Lacomchek admitted his guilt in this matter when he voluntarily signed the waiver offer, Lacomchek did so with extreme prejudice towards the Claimant. Contrary to the Carrier's assertion that Lacomchek had nothing to gain by testifying in this matter, the Organization argues that the "gain" was to see the Claimant be found guilty and also be suspended as retribution. The Organization insists that the Claimant and Lacomchek became engaged in a face-to-face heated argument because of Lacomchek's aggressive behavior.

The Organization then asserts that the Claimant presented Lacomchek with his home address, and advised Lacomchek that they could settle the matter later, as a means to end the confrontation because the Claimant felt defenseless. The Organization emphasizes the Claimant's statement that he was well aware of the Carrier's Workplace

Violence Policy and zero tolerance for physical altercations on the property, so he made the offer as a gesture of resolution, not aggression. The Organization contends that the Carrier's opinion that this was a sign of "intimidating and extremely aggressive" behavior by the Claimant is misplaced given the aggressive and violent conduct displayed by Lacomchek.

The Organization then points out that Lacomchek's aggressiveness caused a knee injury to the Claimant. In fact, as a result of this injury, the Claimant has been out on medical leave since February 16, 2004, and he still is under his doctor's care. The Organization insists that the Claimant is innocent of any wrongdoing in this matter. The Organization argues that after Lacomchek instigated the confrontation, the Claimant managed to maintain his own composure until he could get away from Lacomchek. The Claimant's offer to "settle the matter" after work was not intimidating or aggressive, but rather was an attempt to defuse the situation.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence to support the finding that the Claimant was guilty of violating the Carrier's rules when he became involved in a verbal and physical altercation with a fellow employee in the Penn Coach Yard locker room. Although there was some question as to who was the aggressor in this matter, it is clear that the Claimant continued

to engage in the face-to-face verbal argument with his co-worker. There were threats made by the Claimant and he clearly behaved in an intimidating and aggressive manner.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

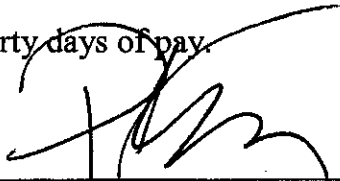
The record in this case reveals that the other combatant in this altercation, Mr. William Lacomchek, admitted his part in this dispute and was only issued a thirty-day suspension. A thorough review of this transcript reveals that the Claimant played no more of a role in this dispute, and maybe even a little less. However, there was no just cause for the Carrier to issue the Claimant the disparate penalty of a sixty-day suspension only because he did not admit his wrongdoing.

This Board finds that the Carrier acted without just cause when it issued a sixty-day suspension to the Claimant. We hereby order that the sixty-day suspension be reduced to a thirty-day suspension and the Claimant be made whole for the additional thirty days.

AWARD:

The claim is sustained in part and denied in part. The sixty-day suspension to the Claimant will be reduced to a thirty-day suspension and the Claimant shall be made

whole for the additional thirty days of pay.



PETER R. MEYERS
Neutral Member

J. D. Del
ORGANIZATION MEMBER
DATED: 9-29-05

R. F. Palmer
CARRIER MEMBER
DATED: 9/23/05

I dissent. The discipline assessed was proper and justified for the previous offense. The fact that Amtrak extended leniency to the other combatant, who admitted his wrongdoing and accepted responsibility for his actions does not justify the majority's election here to extend the same leniency to the claimant.