

Special Board of Adjustment No. 986

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Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –  
NORTHEAST CORRIDOR

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Claimant: Joseph Aceto  
Award No. 248

**Organization's Statement of Claim**

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the 10 day disciplinary suspension assessed on Hunter Yard Machine Operator Joseph Aceto (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated June 21, 2004. The Organization claims that the disciplinary action taken against Claimant was exceedingly harsh in violation of the parties' agreement. As a remedy, the Union asked for the charges to be expunged and the Claimant to be made whole for all lost wages, benefits, and seniority lost due to his suspension.

**Background of the Case**

Claimant is a Machine Operator at the Hunter Yard in Newark, New Jersey and has been employed by Carrier since August 10, 1998.

On June 10, 2004, Claimant was involved in an incident while working at Hunter Yard in which it was alleged that he engaged in rude, disrespectful and uncooperative behavior that resulted in an altercation between himself and Foreman Doroshenko. The Carrier alleged that at approximately 8:00 A.M. Claimant boarded the work train to attend to his machine. When he boarded, Foreman Doroshenko was checking the air levels in the tanks. Claimant argued with Mr. Doroshenko over Mr. Doroshenko's presence. Claimant ripped off the hoses from the machine and threw them off the train. According to Mr. Doroshenko, Claimant then pushed him and went past him. Mr. Doroshenko continued to argue with Mr. Aceto and soon thereafter, co-worker Mr. Barney came upon them. Both Claimant and Mr. Doroshenko called SR Engineer of Structures for the B&B, Mr. John Nizolek. Mr. Nizolek called Supervisor of Structures, Karl Herzek to investigate.

A Notice of investigation, dated June 21, 2004 was served upon Claimant, which charged him with violating Amtrak's Standards of Excellence governing Professional and Personal Conduct and Teamwork and Amtrak's Workplace Violence Policy (PERS-42). The hearing was originally scheduled for June 28, 2004, but was rescheduled once by mutual agreement and twice more at the request of the Organization. The hearing was then held on September 10 2004. The Claimant was represented by the Organization. Claimant was found guilty of the charges and Carrier assessed a 10 day disciplinary suspension upon

Claimant on September 24, 2004. All appeals on the property were unsuccessful and the parties agreed to bring this case to this Board for final adjudication.

**Opinion of the Board**

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the BMW and Carrier.

After hearing upon the whole record and all the evidence, as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. The Carrier argued the record established that on June 10, 2004 Claimant was working as a Machine Operator. According to both the Claimant and Mr. Doroshenko, when Claimant boarded the work train that morning, at approximately 8:00 A.M., Claimant expressed displeasure at Mr. Doroshenko's presence. Mr. Doroshenko was checking the levels in the tanks and had his hoses attached to the tanks' gauges. Words were exchanged between the two men. Mr. Doroshenko testified that the Claimant ripped the hoses from the tanks. The Claimant denied throwing them, but rather claimed he

removed them to avoid an explosion. He admitted brushing up against Mr. Doroshenko to move past him, but denies hitting him.

The Organization argued that the incident was minor and that the penalty was exceedingly harsh. They contend that the event was not witnessed by anyone other than the participants and that counseling was the appropriate way to handle the incident. They noted that both men continued to work together that day and every day since that time (other than for the time of suspension).




Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The Carrier demonstrated by substantial evidence that the Claimant violated the Carrier's Standards of Excellence and their Workplace Violence Policy (PERS-42) by his conduct on June 10, 2006. It is clear that he engaged in rude, uncooperative and threatening conduct that led to a physical altercation. In point of fact the record established that both men acted in an unprofessional manner that violated the Standards of Excellence and the Workplace Violence Policy.

The Carrier's Standards of Excellence establish rules of conduct that all employees are expected to adhere to. Clearly the Carrier has the right and obligation to prohibit behavior that is unprofessional and that could lead to violence on its premises. The railroad is simply not a place that can tolerate fisticuffs. Failure to conduct one self properly endangers the lives of Carriers'

employees. Additionally there is no evidence of disparate treatment. Both Claimant and Mr. Doroshenko were punished for their behavior. Thus, this Board finds that the penalty was not excessive.

**Award**

The Claim is denied.

  
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Gayle A. Gavin, Chair & Neutral Member  
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Jed Dodd, Organization Member  
Dated: 2/26/2007  
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Rick Palmer, Carrier Member  
Dated: 2/26/07