

Special Board of Adjustment No. 986

Parties to the Dispute

The Brotherhood of Maintenance of Way Employees

vs.

National Railroad Passenger Corporation (Amtrak) – Northeast Corridor

**Claimant: Paul Bridgemohan
Award No. 250**

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Trackman Paul Bridgemohan (the "Claimant") on charges that he violated the Carrier's Standards of Excellence set forth in the Carrier's Notice of Investigation dated May 3, 2005. The Organization claimed that the charges were unproven, arbitrary, capricious and an abuse of the Carrier's discretion. As a remedy, the Organization asked for the Claimant to be reinstated to service with seniority, full back pay, his record cleared of the instant charges and all other rights unimpaired.

Background of the Case

The Claimant, Paul Bridgemohan, is a Trackman with approximately seven years of service at the time of the incident. He was assigned to the rail and concrete tie unit headquartered at South Plainsfield, New Jersey when the incident involved

in this dispute occurred. His gang was lodged at the South Plainsfield Holiday Inn. The Claimant was charged with a violation of Amtrak's Standards of Excellence governing Professional and Personal Conduct, Amtrak's Values (Integrity) and Amtrak's Policy on anti-discrimination and anti-harassment. The charges stem from a complaint that on April 23, 2005, while lodged at the hotel at Amtrak's expense, he improperly touched and harassed a female employee of the Holiday Inn while she was on duty. He was taken out of service on the same date. By letter dated May 3, 2005 the Claimant was notified that an investigation into the charges was scheduled for May 10, 2005. The investigation was postponed, rescheduled and concluded on May 19, 2005. The Claimant was found guilty and assessed the discipline of dismissal, effective June 2, 2005. All appeals on the property were unsuccessful and the parties agreed to bring this case to the 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 Brotherhood of Maintenance of Way Employees and the National Railroad Passenger Corporation. After hearing upon the whole 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 Claimant, Paul

Bridgemohan, was present at the Board's hearing, was afforded an opportunity to make a statement on his behalf and was represented by the Organization.

At the Board's hearing, the Carrier contended that its actions in this case were warranted. The record contained sufficient evidence that established the Claimant was guilty of violating the Carrier's Standards of Excellence governing Professional and Personal Conduct, Amtrak Values (Integrity) and the Carrier's anti-discrimination and anti-harassment policy. The evidence proved the Claimant engaged in prohibited behavior when he sexually harassed a female employee of the Holiday Inn while she was on duty and touched her inappropriately. Additionally, the Carrier maintained that the Claimant, in his own testimony, admitted that he had kissed and hugged with the employee. While he maintained that it was consensual, the Carrier argued to the Board that such behavior was prohibited. The Claimant's conduct at the hotel, where he was lodged at the Carrier's expense, resulted in the hotel issuing a letter to the Carrier requesting that his hotel privileges be rescinded in order to protect the hotel staff from further harm. His behavior, the Carrier argued, discredited the Carrier and created a loss of good will with the hotel. Finally the Carrier contended that it has zero tolerance for any form of harassment or sexual misconduct in the workplace. It argued the Claimant's short tenure and his past disciplinary record together with the serious nature of the proven charges support the Carrier's decision to terminate the Claimant's employment. Arbitral precedent was offered in support of the Carrier's position.

The Organization, on the other hand, contended that the Carrier failed to prove its case against the Claimant. It argued to the Board that the Carrier can not rely on mere speculation, assumption or conjecture as a basis upon which to impose discipline. In the instant case, the Organization maintained that the matter centered on the testimony of a single witness, the accuser. No supporting testimony was offered by the Carrier. The Organization contended that the relationship was consensual and had been going on for a while. This was supported by the testimony of Carrier employee, C. Dorsey. He testified that on an earlier occasion he saw the Claimant and a woman, he identified as a hotel clerk of Caribbean or Haitian descent, engaging in consensual hugging and kissing near the elevator at the hotel. Under those circumstances, the Organization argued the dismissal of the Claimant was not supported by substantive evidence and the Claimant should be restored to service with his seniority unimpaired. The Organization also offered arbitral authority.

Upon a review of the entire record developed in this case, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant was guilty of the charges. We reiterate that this Board sits as an appellate body. We do not engage in making *de novo* findings of fact but rather we sit in review of the findings made by the Carrier on the property. We are bound to accept those findings unless they bear no rational relationship to the evidence of record. In the matter before us, we have accepted the Carrier's findings. The record in this case fully supports the Carrier's determination that the

Claimant engaged in misconduct when he touched and harassed a female employee of the hotel where he was lodged at the Carrier's expense.

Because of the serious nature of the misconduct, the Carrier had an obligation to take stern disciplinary action against such behavior and assess the discipline that it did. Support for the Carrier's actions can be found in numerous Board awards.

See: SBA No. 986, Case No. 170; PLB 6216, Case No. 4; PLB No. 4244, Award No. 289.

As to the penalty of dismissal imposed by the Carrier, Boards are not warranted in disturbing the penalty imposed unless from the record the Carrier's action as to the penalty was unjust, unreasonable or arbitrary as to constitute an abuse of discretion. See NRAB Third Division Award No. 19735 (Roadley). In the instant matter the Claimant is a short term employee with a 30 day suspension on his record for insubordination. The Board finds nothing in the record to support or justify disturbing the penalty imposed.

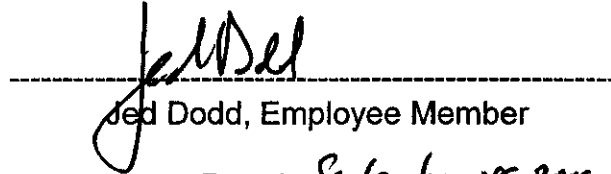
Finally it is well settled in the railroad industry that Boards have no authority to extend leniency where the Carrier has elected not to do so. Witness for example, PLB No. 995, Award No. 32; PLB No. 1840, Award No. 5; PLB No. 2406, Award No. 56.

Award

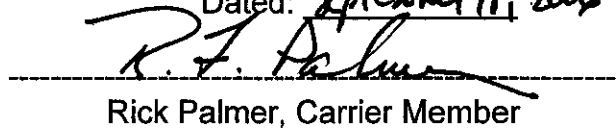
The claim is denied.

SBA 986
Award 250


Gayle A. Gavin, Chair & Neutral Member


Ted Dodd, Employee Member

Dated: September 18, 2006


Rick Palmer, Carrier Member

Dated: 9/18/06