

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Edward Quarles
Award No. 254

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Mid-Atlantic Division Truck Driver Edward Quarles (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated May 5, 2005. The Organization claims that the Claimant's dismissal from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier") was arbitrary, capricious and exceedingly harsh in violation of the parties' agreement. As a remedy, the Union asked for the Claimant to be made whole for all wages, benefits, and seniority lost from the time of his dismissal to his reinstatement.

Background of the Case

Carrier hired the Claimant on October 7, 1977 as a Truck Driver.

On April 12, 2005, Claimant was involved in an accident with a privately owned trailer, in which he was alleged to have negligently caused damage to private property, argued unprofessionally with the owners of said property, failed to report the accident and lied about it when questioned by Amtrak officials. A Notice of Investigation was served upon Claimant on May 5, 2005, which charged Claimant with violating Amtrak's Standards of Excellence involving Safety, Attending to Duties, Professional and Personal Conduct (Teamwork) and Trust and Honesty. Claimant was found guilty of the charges. Carrier dismissed Claimant on August 2, 2005 based upon these charges and his prior disciplinary record. All appeals on the property were unsuccessful and the parties agreed to bring the 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 BMWWE 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 Claimant, Edward Quarles, was present at the

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

The Carrier contended that its actions in this case were justified and supported by substantial evidence. The record established that on April 12, 2005, Claimant was assigned to install ties at Mile Post (MP) 100 in Bowie, Maryland. Welding Foreman William Howe testified that he witnessed Claimant exchanging words with several people near the parking lot. He went to the scene and was advised by the owners of a Western Express Trailer that an Amtrak vehicle had hit the trailer and punctured it. Howe witnessed the damage firsthand. The owners advised that the Amtrak employee told the owners that he "did not hit the damned" vehicle and that the employee left the scene. During the disciplinary investigation hearing, the Claimant was identified by one of the eyewitnesses as the employee who hit the vehicle. The record also established that Amtrak Supervisors were called to the scene. They testified that when the Claimant returned to the scene he denied hitting the trailer. He later filed a report indicating that he may have hit the trailer, but was unsure. He then later denied signing or writing the statement.

The Organization argued that the Carrier failed to prove the charges. They argued that the owners of the trailer had a motive to be dishonest regarding the accident because they were attempting to obtain money from Amtrak for previous damage to their trailer. Thus, according to the Organization, no one witnessed

the accident and there were many vehicles that could have caused the damage.

Moreover, the Organization denied the Claimant was dishonest about the incident or rude to the public. Finally, they argued that even if he did have the accident, the accident was minor and not significant enough to warrant termination, based upon the Claimant's 28-year employment history with the Carrier.


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 regarding the April 12, 2005 incident. The evidence established the culpability of the Claimant of the charges. Claimant failed to report the accident; and denied or couldn't remember his own prior signed statement.

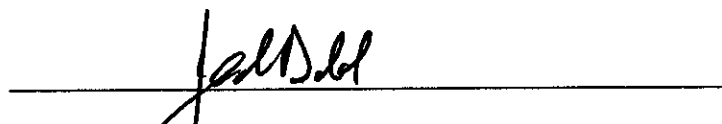
The Carrier's Standards of Excellence establish rules of conduct that are expected of all its employees. Clearly the Carrier has a right to expect its employees to operate equipment safely, deal with the public professionally, and report incidents honestly to its management. Failure to do so endangers the lives of Carriers' employees and the public; and hurts the Carrier's relations with the public. In the instant matter the Claimant had an obligation to follow the prescripts of the Carrier's standards of conduct and the record demonstrated that he failed to do so. However the record also established that the accident was of a minor nature. Taking that into account, the specific circumstances surrounding

the accident together with the Claimant's over 28 years of service with the Carrier require this Board to find the penalty as excessive. However, the Claimant should understand that his reinstatement, pursuant to an Interim Award, dated July 27, 2006, was done on a last chance basis. Any future missteps by the Claimant shall be dealt with severely. Either the Claimant adheres to accepted rules of conduct or he will no longer be an employee with the Carrier.

Award

The Claim is partially sustained. The record, taken in its entirety, established that the grievant is guilty as charged. The discipline of dismissal is modified to a suspension for time served. The Carrier had been directed in the Board's Interim Award, dated July 27, 2006, to restore the Claimant to service. Reinstatement is on a last chance basis. The Claimant's restoration to service was without back pay. All time he was held out of service shall be considered a disciplinary suspension.


Gayle A. Gavin, Chair & Neutral Member


Jed Dodd, Organization Member
Dated: September 18, 2006

SBA 986
Award 254

A handwritten signature in black ink, appearing to read "Rick Palmer", is written over a horizontal line.

Rick Palmer, Carrier Member

Dated: 9/18/06