

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL DIVISION

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Steven J. Oravets
Award No. 257

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a 60 day suspension assessed on Morrisville, Pa., Electrical Traction Lineman Trainee Steven J. Oravets (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated March 15, 2005. The Organization claimed that the Claimant was unjustly suspended from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier") on April 11, 2006. 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 suspension to his reinstatement, and that the discipline be expunged from his record.

Background of the Case

Carrier hired the Claimant on November 28, 2005 as an Electric Traction Lineman Trainee at its Morrisville, Pennsylvania facility. On March 3, 2006, Claimant is alleged to have engaged in disrespectful, abusive and belligerent behavior, which included a verbal and physical altercation with Foreman Robert Mack at the ET headquarters, in Morrisville, PA.

A Notice of Investigation, dated March 15, 2006, was served upon Claimant, which charged him with violating Amtrak's Standards of Excellence governing Professional and Personal Conduct – Teamwork and Amtrak's Workplace Violence Policy PI Number 3.12.0). A hearing was held on March 29, 2006. Claimant was found guilty of the charges. On April 11, 2006, Carrier imposed a 60 day suspension upon Claimant. 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 BMWV 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 was represented by the Organization at the Board's hearing.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. The record established that on March 3, 2006, at approximately 7:30 A.M., Claimant was assigned as an ET Lineman Trainee under the supervision of Foreman Robert Mack, in Morrisville, PA. On the morning in question, Mr. Mack directed Claimant to ride in Truck 328. According to Mr. Mack, he believed that Claimant was not following his directions. He overheard what he believed to be a complaint and had to tell the Claimant two times to get his gear and head to the truck. Mr. Mack later changed his direction to the Claimant and ordered him to ride in another truck. When Mr. Mack went to put a clip board into the same truck, Mr. Mack stated that Claimant left his seat and came around accused Mr. Mack of calling him a "mother fucker". He then grabbed and pushed him into the truck. While Claimant denied being the aggressor, two co-workers Mr. Phillips and Mr. Raymond witnessed the attack and stated that they perceived Claimant to have been the aggressor.

The confrontation continued in the locker room with both the Claimant and Mr. Mack engaging in confrontational behavior in the locker room until it was broken up by Supervisor Koehler. Both Mr. Mack and Claimant were disciplined.

The Organization argued that the Carrier failed to prove the charges. They argued that Mr. Mack's comments initiated the confrontation and subsequent physical attack that occurred. They contended that the Claimant suffered injuries that suggest that Mr. Mack was the attacker. They further claimed that the Carrier imposition of a 30 day penalty (reduced for fifteen days served) to Mr. Mack constituted unequal application of discipline.

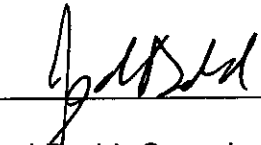
Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The Carrier demonstrated by substantial evidence that the Claimant violated the Carrier's Standards of Excellence and Workplace Violence regarding the March 3, 2006 incident. No matter what the exchange was between Mr. Mack and the Claimant, there can be no excuse for the physical altercation that ensued. Witnesses established that Claimant participated in it and was not merely defending himself. While the Organization contended that the imposition of a lesser suspension upon Mr. Mack evidenced disparate treatment, the Board disagrees. Claimant is a short term employee who at the time of the altercation had approximately 13 weeks seniority. That being said there are no grounds to mitigate the penalty. In point of fact, a word of caution is offered to the Claimant. The Claimant must understand that altercations in the workplace can not and will not be tolerated. He should treat this as a warning that future similar conduct will be viewed severely.

Award

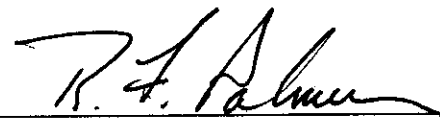
The claim is denied.



Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member
Dated: 2/26/2007



Rick Palmer, Carrier Member
Dated: 2/26/07