

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: Craig Myles

Award No. 261

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the 60 day disciplinary suspension assessed on Northeast Corridor Truck Driver Craig Myles (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated October 26, 2006. The Organization claims the Claimant was unjustly disciplined. It further argues in the event the Board finds a basis to uphold the Carrier's finding of guilt, the penalty should be modified because it is unduly harsh and capricious. As a remedy, the Union requests the Claimant be made whole for all wages, benefits and seniority lost for the time of his suspension and for the discipline to be expunged from his record.

### Background of the Case

The Claimant was hired by Carrier on April 6, 1992 as a Truck Driver. On October 16, 2006, the Claimant was working with the TLS Unit and was engaged in a heated conversation with Manager, Field Operations Anthony Civil in which Claimant made racially offensive remarks. A Notice of Investigation dated October 26, 2006 was served upon Claimant. Claimant was found guilty of the charges and assessed a 60 day disciplinary suspension based upon the charges. All appeals on the property were unsuccessful and the parties agreed to bring the case to this Board for 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 hereon. The Claimant, Craig Myles, was represented at the hearing before this Board by the Organization.

The Carrier contended its actions in this case were justified and supported by substantial evidence. The Carrier cited the record evidence which established the Claimant made racially offensive remarks to a supervisor in front of other employees.

Carrier noted its anti-discrimination and harassment policy establishes such racially charged language to violate the policy and constitute serious misconduct.

Carrier contended the 60 day penalty was appropriate because of the serious nature of the offense. Carrier distinguished the instant matter from another case involving allegations of racially offensive remarks which resulted in a 15 day suspension for an employee. In that case, the hearing officer found the racial epithet was used only once and the hearing officer credited the testimony of the accused that the statement was not directed toward an individual, but rather made in a generalized manner. In this case, Carrier argued the Claimant was found to have directed his racially offensive remarks at a supervisor in front of other employees. The remarks consisted of more than one racial epithet and, thus, the incident is more serious and required greater discipline, according to the Carrier.

The Organization argued the Grievant did not call the supervisor by a racial epithet, but rather used the term as part of a question and, thus, they argued it was not meant to disparage the supervisor. With respect to the penalty, the Union maintained even if a policy violation were to be found, a 60 day penalty is unduly harsh and capricious because the Carrier had implemented substantially less penalties for similar conduct. The Organization cited the Carter decision, in which the Carrier suspended the Claimant for 15 days for using a racial epithet as proof of disparate treatment.

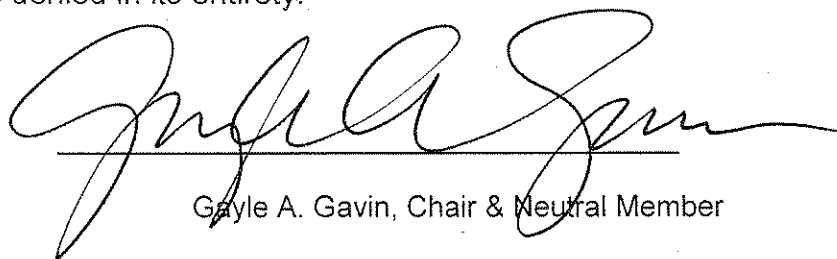
Upon a review of the entire record, the Board finds the Carrier's determination herein was appropriate. The evidence established that Claimant was guilty of violating Carrier's Anti-Discrimination and Anti-Harassment Policy. It is well established that Carrier has not only the right to maintain its standards of conduct and anti-discrimination

policies, but also to enforce them to ensure they maintain a discrimination and harassment free environment. The Carrier's anti-discrimination and anti-harassment policy prohibits the use of racially derogatory language in the workplace. In the instant matter, Claimant had an obligation to conduct himself within the bounds of the policy and to refrain from using such language. There was evidence in the record for the hearing officer to have concluded the remarks were made and violated the Carrier's policies. Thus, this Board has no basis to disturb the Carrier's findings of guilt.

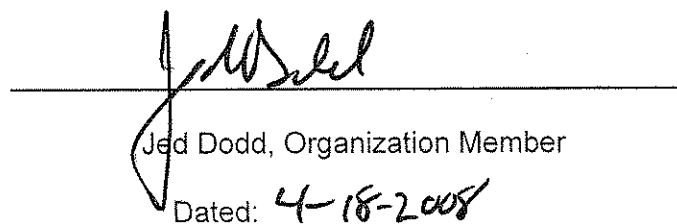
Likewise, the Board does not find any evidence of disparate treatment with respect to penalty. The case cited by the Organization differs with respect to the underlying actions and, Carrier, therefore has shown a basis to have implemented a more severe penalty in this case.

AWARD

The claim is denied in its entirety.



Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member  
Dated: 4-18-2008

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Rick Palmer, Carrier Member

Dated: 4/18/08