

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.

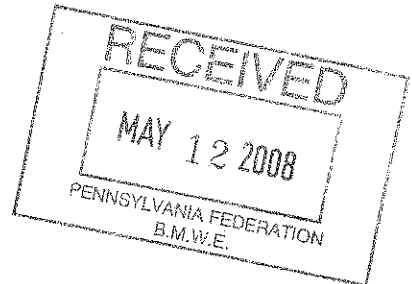
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) – NORTHEAST  
CORRIDOR

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Claimant: Kenneth Avens

Award No. 266

Organization's Statement of Claim



The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the penalty of termination assessed on Northeast Corridor B&B Inspector, Kenneth Avens (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated April 5, 2007. The Organization claims the Claimant's discharge was unduly harsh, unjust and capricious and, therefore, should be reduced.

Background of the Case

The Claimant was hired by Carrier on September 20, 1983. On the evening of March 19, 2007, Claimant was seen in a bar by an off-duty Amtrak employee drinking a beer. Claimant was charged with unauthorized use of a company vehicle while using alcohol. Claimant was found guilty of the charges and was terminated from his employment. 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 BMWE 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, Kenneth Avens, 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 its actions in this case were justified and supported by substantial evidence. The Carrier noted the Claimant was seen drinking in a bar and using an Amtrak vehicle without authorization. Since Claimant had not signed the truck out, Amtrak personnel called the NYC and Amtrak police to locate the vehicle,

believing it was stolen. When the truck was found, Claimant had alcohol on his breath. The Claimant was spotted in the vehicle on 33<sup>rd</sup> Street and 1<sup>st</sup> Avenue illegally parked by a fire hydrant with the vehicle running. He admitted not being authorized to use the vehicle. The Claimant tested positive for alcohol. The Carrier argued termination is appropriate in this case given the serious nature of the charges and the Claimant's prior record. Carrier contended unauthorized use of a company vehicle is a dishonest act and has consistently been held by prior Boards to warrant termination. Moreover, they note Claimant has seven prior disciplinary actions.

The Organization argued termination is too harsh a penalty in this case. They contended the Claimant did not intend to steal the vehicle and, therefore, was not dishonest. They noted the evidence in the record established that other employees used vehicles without permission. They argued the Claimant has acted responsibly by seeking treatment for his alcohol use and given his long tenure with Carrier, termination is an unjust penalty.

Upon a review of the entire record, the Board finds the Carrier's determination herein was appropriate. Carrier has the responsibility to ensure that its vehicles are used appropriately. The record evidence established the Claimant used an Amtrak vehicle without permission. Moreover, during that time, he was under the influence of alcohol and placed himself, the public and Amtrak in danger. His actions can only be termed as gross misconduct. The Organization urged the Board to take into account his long seniority and to consider that he has rehabilitated himself since the unfortunate incident. The Board would note that his steps to rehabilitate himself seem authentic. However because of the seriousness of his wrongdoing together with his prior


disciplinary record this Board cannot find that the Carrier's actions were arbitrary or unreasonable when it terminated the Claimant. There is simply no basis for mitigation. Therefore, this Board has no basis to disturb the Carrier's findings of guilt or the penalty assessed.

AWARD

The claim is denied in its entirety.

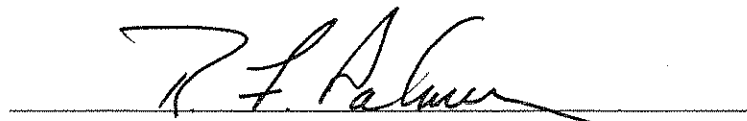


Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member

Dated: 5/8/08



Rick Palmer, Carrier Member

Dated: 5/8/08