

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: Robert Calhoun  
Award No. 277

**Organization's Statement of Claim**

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a thirty day suspension assessed on Foreman Robert Calhoun (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated August 13, 2008. The Organization claims that the Claimant was unjustly disciplined from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). 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 assessed is expunged from his record.

**Background of the Case**

The Claimant was hired by Carrier on March 9, 1998. The Carrier charged him with violations of certain NORAC Rules, Roadway Worker Protection Manual

Rules 313 and 327 as well as Violation of Amtrak's Standards of Excellence involving Safety, Attending to Duties, Trust and Honesty, Professional and Personal Conduct for an incident that occurred on July 23, 2008. On such date the Claimant was responsible for piloting a Tie Handler machine from Metuchen Yard to the out of service track, Track 1, between Lincoln and Menlo. He was charged with negligently operating Switch 43B and proceeding without permission onto Amtrak's "O" Track, a mainline track. After a mutual postponement an investigation was held on November 25, 2008. Claimant was found guilty of the charges and the Carrier assessed a thirty day suspension for a violation of the Carrier's Standards of Excellence. 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 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, Robert Calhoun, was ably represented by the Organization at the hearing before the Board.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. It argued the record demonstrated that the Claimant occupied Track "O", a mainline track without authority and without a requisite Form D. Additionally the evidence established, according to the Carrier, he operated Switch 43B without Dispatcher permission. In point of fact the Claimant never sought permission to occupy Track "O" or to operate Switch 43B. His actions violated safety and operating rules in place to safeguard employee, the riding public as well as to prevent serious collisions and train accidents.

Accordingly, Carrier argued that the 30 day suspension of Claimant was not arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

The Organization argued that the incident was not the fault of the Claimant but rather the Dispatcher was culpable. The Dispatcher did not know where anyone was on the date in question and it was obvious from the record that he should bear the responsibility for the unfortunate incident. While he too was disciplined, the Carrier, in its haste to place the blame on the Claimant, failed to consider the circumstances. Under these circumstances, the Organization argued, the charges should not be sustained. Alternatively, the Claimant has a good record with only one prior in the approximately eleven and a half years with the Carrier

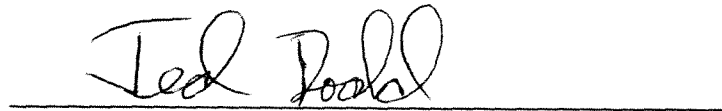
and should not have been disciplined as harshly as the thirty day suspension assessed by the Carrier.

Upon a careful review of the entire record, the Board finds that the Carrier's determination herein was supported by substantial evidence of record. The evidence established that on July 23, 2008 the Claimant occupied Track "O", a mainline track, without receiving permission to do so and without a Form D. He also operated Switch 43B without first receiving authority to do so from the Dispatcher. In actuality the Claimant by his own admission had no authority. While the Organization argued that the Dispatcher was to blame, such argument is not supported by the record. Additionally the Organization, in support of its argument, contended the Dispatcher was also charged for the incident. However, a review of the evidence indicated he was charged with failing to report, as required, the incident involving the Claimant, not for the incident itself.

Certainly no one could question the possible consequences that could have occurred from his actions on the night in question. There are safety rules in place for a reason – to prevent harm or injury to man or equipment. The railroad is a dangerous place to work. There is simply no room for a misstep. The results can be catastrophic. Under circumstances as presented herein, this Board finds ample evidence of the Claimant's culpability. The penalty is modified to the time the Claimant has already served toward his assessed discipline.

**Award**

The claim is denied in part and granted in part.

  
Gayle A. Gavin, Chair & Neutral Member

Jed Dodd, Organization Member

Dated: 10/14/09



Rick Palmer, Carrier Member

Dated: 10/14/09