

NATIONAL MEDIATION BOARD  
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

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NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) – NORTHEAST CONFERENCE (“CARRIER”)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 285  
Employee: Charleston George

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Neutral Member: Barbara Zausner  
Carrier Member: Richard Palmer  
Organization Member: Jed Dodd

STATEMENT OF CLAIM

- 1- The dismissal of Claimant C. George for the alleged violation of General Code of Operating Rules (GCOR) 5<sup>th</sup> edition April 3, 2005 10.1 and 10.3, is excessive, unwarranted and in violation of the Agreement (System File BMW-551-D).
- 2- As a consequence of the violation referenced in Part I above, Mr. George shall be exonerated of all charges and he shall be compensated for all wage loss suffered as a result of the Carrier's actions.

## FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant, Charleston George, was a Central Division Track Foreman. He was dismissed for violating General Code of Operating Rules for operating a high rail weed spray truck to occupy the Back Up Main between CP Clara St. and CP South Wye junction outside the limits of Track and Time Authority 501 and 502. On the day in question he was the Employee in Charge of On Track Safety.

The record establishes that the Claimant was given track and time authority for forms 501 and 502 which form was initialed by the dispatcher to show the Appellant had correctly repeated back. The dispatcher noticed a track indication light that indicated the Claimant was outside the track and time authorities issued to him. The Claimant confirmed he was in the wrong place. He acknowledged during the investigation that he knew the significance and the dangers that could have resulted from his being "in the wrong place at the wrong time. He claimed it was a slow train day.

There is no dispute that the Claimant occupied the track without proper track protection on July 28, 2009. The Organization argues that the charges in this case are unrelated to the Claimant's previous

incidents. The Organization points to the Claimant's nearly eighteen years of satisfactory service and contends the dismissal is punitive, harsh and excessive.

The Organization cites an NRAB Third Division Award 19037 which found the Carrier "estopped from urging incidents remote in time as a basis that Claimant is a second offender." That Board also held, "the ultimate penalty of dismissal is reserved for repeated and serious infractions of work or conduct rules."

The record confirms that the incident at issue is the Claimant's third operating rule violation. There are two earlier occasions in 2002 and 2005 as well as unrelated offenses in 2008 and 2009. The Claimant's eighteen years of service, including the violations cited above, is not so satisfactory as to constitute a mitigating factor sufficient to set aside the termination.

This Board has upheld other dismissals where an employee was "guilty of violating several Carrier safety rules...." The Board concluded, "Given that poor service record, coupled with the serious safety violations" committed by the claimant, that termination was not unreasonable, arbitrary or capricious." (SBA No. 986, Case No. 247 (Meyers)). Contrary to the Organization's assertions, the Claimant is not a first time offender. He has been disciplined in the past for safety violations and had ample time to correct his behavior.

AWARD

The claim is denied.



Barbara Zausner, Neutral Board Member  
May 31, 2010

 6/8/10

For the Carrier  
Richard F. Palmer, Director – Labor Relations

 6/8/10

For the Organization  
Jed Dodd, General Chairman