

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Giovanni Rivera
Award No. 249

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a sixty-day suspension assessed on Mid-Atlantic Division Electrical Track Division Lineman Giovanni Rivera (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated December 22, 2004. The Organization claims that the Claimant was unjustly disciplined by his employer, the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be exonerated of the Charge, his record to be expunged and the Claimant to be compensated for all hours lost resulting from this discipline.

Background of the Case

Carrier hired the Claimant on July 12, 2004 in its Maintenance of Way and Structural Department where he worked mainly as an Electrical Traction Lineman. On December 13, 2004, Claimant was involved in an accident while

driving an Amtrak vehicle. While transporting three Carrier employees he backed the vehicle into a CAT pole. The accident resulted in damages to a new Carrier vehicle, totaling at least \$5000.00.

A Notice of Investigation, dated December 22, 2004, was served upon Claimant, which charged him with violating Amtrak's Standards of Excellence regarding safety, attending to duties, professional and personal conduct (teamwork) and with violating Rules 4204 and 4233 of the "Safety Rules and Instructions" for Maintenance of Way Employees. The matter was originally scheduled to be heard on January 10, 2005 but was postponed at the Organization's request and rescheduled for February 2, 2005. The matter was heard on such date and the Claimant was found guilty of the charges by decision dated February 16, 2005. The Carrier dismissed Claimant; However on the basis of leniency the dismissal was reduced to a 60 days suspension, to be held in abeyance pending appeal. On appeal the Carrier modified the suspension to 30 days. Again the matter was appealed by the Organization as unsatisfactory, predicated on such modification being still unacceptable to the Claimant. On further appeal, the Carrier, in light of the Claimant's continuing refusal to accept any responsibility for his actions, assessed a discipline of a 60 days suspension. 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 thereon. The Claimant was represented by the Organization.

The Carrier argued that its actions in this case were justified and proper. Carrier contended that it proved by substantial evidence in the record that the Claimant was guilty of the Charges and Specifications enunciated in its Notice of Investigation dated December 22, 2004. The evidence overwhelmingly established, the Carrier maintained, that its Standards of Excellence and Safety Rules for Maintenance of Way Employees were violated by the Claimant when he was involved in the accident on December 13, 2004. The Carrier further argued that it has the right and responsibility to establish and enforce rules for the safe conduct of its operations. Given that safety is of paramount concern the penalty can not be viewed as excessive, especially in light of the Claimant's failure to accept any responsibility for an accident that resulted in approximately \$5000.00 in damage to a Carrier vehicle.

The Organization argued that the charges were unproven and the Claimant should be exonerated of the charged. It argued that the Claimant was involved in an accident while driving a Carrier vehicle but there were extenuating

circumstances that should relieve him of culpability. The record indicated that the Claimant's vision was blinded by sun glare as he was attempting to back the vehicle up on the date in question. That should have been given due consideration as to the cause of the accident, the Organization contended.

Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. It is the Board's determination that the Carrier proved by substantial evidence that the Claimant was guilty of violating the Carrier's Standards of Excellence regarding safety, attending to duties, professional and personal conduct and, additionally, safety rules of the Maintenance of Way Employees. The Board would iterate that the need to adhere to safety rules and regulations can not be over emphasized. The Claimant had a responsibility to operate the Carrier vehicle in a safe manner and adjust his driving to compensate for the conditions presented. This he failed to do. The Board can not concur with the Organization that the Claimant was placed in an untenable position and the accident was unavoidable.

Finally, the Board will not disturb the penalty assessed. Leniency is not the province of the Board. The Carrier offered the Claimant leniency at the prior steps and the Board will not intervene. The Claimant was a short-term employee with less than two years of seniority at the time of the incident. Therefore, this Board will not modify the discipline assessed.