

Special Board of Adjustment No. 986

Parties to the Dispute

**The Brotherhood of Maintenance of Way Employees
Divison – IBT Rail Conference**

vs.

National Railroad Passenger Corporation (Amtrak)

**Claimant: Garry Villano
Award No. 253**

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Foreman Garry Villano (the "Claimant") on charges that he violated the Carrier's Standards of Excellence, specifically parts entitled "Trust and Honesty" and "Professional and Personal Conduct – Teamwork" set forth in the Carrier's Notice of Investigation dated March 2, 2005. The Organization claimed that the charges were unproven, harsh and capricious. As a remedy, the Organization asked for the Claimant to be reinstated to service with seniority, full back pay, his record cleared of the instant charges and all other rights unimpaired.

Background of the Case

The Claimant, Garry Villano, is a Track Foreman with 28 years of service at the time of the incident. By letter dated March 2, 2005 the Claimant was notified that an investigation was scheduled for March 10, 2005 into the charges that on

February 10, 2005 he used a Carrier van without permission or authorization and that he lied about it when questioned by his supervisor.¹

The investigation was mutually postponed and postponed again at the request of the Organization until April 19, 2005. It finally concluded on July 26, 2005.

Subsequent to the conclusion of the investigation, the Claimant was found guilty and assessed the discipline of dismissal on August 9, 2005. 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 Brotherhood of Maintenance of Way Employees and the National Railroad Passenger Corporation. After hearing upon the whole 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, Garry Villano, was present at the Board's hearing, was afforded an opportunity to make a statement on his behalf and was represented by the Organization.

¹ A third specification was dismissed at trial for insufficient evidence. It is not part of this appeal.

At the Board's hearing, the Carrier contended that its actions in this case were justified and appropriate. The Carrier stated the evidence established that the Claimant on February 10, 2005 took a Carrier vehicle without authorization. The vehicle had been parked at the hotel parking lot in Lancaster, Pennsylvania, where the crew was lodged and was subsequently spotted outside the Truck Shop, 30th Street Station in Philadelphia, the Carrier maintained. The record further demonstrated that the Claimant did not have permission to use the vehicle. When questioned, the Carrier contended, the Claimant lied and told his supervisor he had taken the vehicle to the Truck Shop for periodic maintenance. The Carrier contended that it was not normal procedure for a foreman to arrange maintenance for a vehicle but rather any problem was normally discussed with the supervisor who either calls the truck shop or gives permission to the foreman to call the shop for maintenance. Based on the Claimant's dishonesty, the Carrier maintained that dismissal is the proper and inevitable response. The Carrier offered numerous arbitral precedents in support.

The Organization, on the other hand, argued to the Board that the Claimant should be restored to service with his seniority unimpaired. It explained that the Claimant was a foreman assigned and working with a traveling gang temporarily headquartered at Lancaster, Pennsylvania at the date in question. The normal weekly practice for the Claimant as foreman was to drive the gang's van to Philadelphia, 30th Street Station to drop off time cards and pick up pay checks for the gang. This was done, the Organization maintained, with the full knowledge of

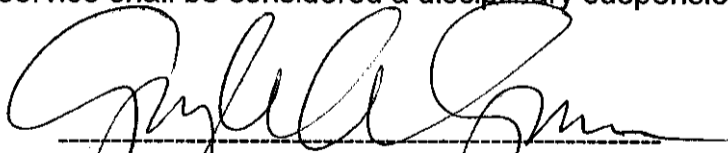
his supervisor. Such was the case on the date of this inquiry. The Organization further contended that at the nightly job briefing on February 9, 2006, the Claimant openly discussed his plans to go to Philadelphia, try to get needed maintenance done on the vehicle and also pick up some materials needed for an upcoming job. His supervisor was present and at no time voiced any objection to the Claimant's planned trip to Philadelphia. Only when his supervisor was questioned about the vehicle by his superior did it become an issue, argued the Organization. Based on the circumstances as supported by the record, the Organization contended, the Carrier failed to prove the Claimant acted dishonestly.

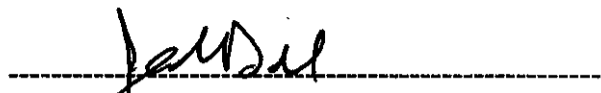
Upon a review of the entire record developed in this case, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant was guilty of the charges. We reiterate that this Board sits as an appellate body. We do not engage in making *de novo* findings of fact but rather we sit in review of the findings made by the Carrier on the property. We are bound to accept those findings unless they bear no rational relationship to the evidence of record. In the matter before us, we have accepted the Carrier's findings. As to the penalty of dismissal imposed by the Carrier, the Board, in this limited instance, predicated on the specific circumstances as argued by the Organization, has modified the penalty. Although the Board has decided to modify the penalty, it needs to be clear that we are not condoning dishonesty nor are we suggesting that it is not a serious infraction.

In point of fact, a word of caution to the Claimant is necessary. The Claimant should be warned that any future misconduct will be dealt with severely. He has clearly exhausted any good will that may be evidenced herein. His reinstatement is on a last chance basis. Either the Claimant will adhere to the governing rules of acceptable conduct or his employment with the Carrier will come to an end.

Award

The claim is partially sustained. The record, taken in its entirety, established that the grievant is guilty as charged. The discipline of dismissal is modified to a suspension for time served. The Carrier had been directed in the Board's Interim Award, dated July 27, 2006, to restore the Claimant to service. The Claimant's restoration to service was on a last chance basis without back pay. All time he was held out of service shall be considered a disciplinary suspension.


Gayle A. Gavin, Chair & Neutral Member


Jed Dodd, Employee Member

September 18, 2006
Dated


Rick Palmer, Carrier Member
9/18/06
Dated