

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Henry Williams
Award No. 256

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on TLS Trackman Henry Williams (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated April 5, 2006. The Organization claimed that the Claimant's termination from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier") was arbitrary, capricious and exceedingly harsh in violation of the parties' agreement. As a remedy, the Union asked for the Claimant to be reinstated and made whole for all wages, benefits, and seniority lost from the time of his dismissal.

Background of the Case

Carrier hired the Claimant on May 24, 1999 as a Trackman. He was regularly assigned to the Carrier's Track Laying System (TLS) and was working with the gang's two MFS 40 cars on the date of the incident.

On March 29, 2006, Claimant was involved in an incident that resulted in injury to the Claimant's middle finger while cleaning ballast from a conveyor belt. He was charged with violating the Carrier's Standards of Excellence governing Professional and Personal Conduct (Teamwork), Safety and Attending to Duties and violation of Maintenance of Way Safety Rules and Instructions. The Carrier claimed the Claimant was negligent and then failed to attend to his duties in a safe and proper manner. Additionally he failed to complete an Amtrak Injury/Accident Report as ordered. A Notice of Investigation was served upon Claimant on April 5, 2006 and an investigation was conducted on April 12, 2006. Claimant was found guilty of the charges excepting one. The Carrier dismissed Claimant on April 26, 2006 based upon those charges and his prior disciplinary record. 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 thereon. The Claimant, Henry Williams, 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 that its actions in this case were justified and well supported by substantial evidence. The record established, according to the Carrier, that on March 29, 2006, Claimant was assigned to clean ballast from a conveyor belt of MSF-40 car near milepost 14.6 which resulted in injury to his left middle index finger. It further established the Claimant was aware that the conveyor belt had been moving in one direction and then in the other. He should have confirmed with the operator that the machine was not going to restart. His actions violated Safety Rules 4161, 4323 and 4331.

Additionally the Carrier contended that the Claimant received several directions to complete Form 260, the Amtrak Injury/Accident Report, and was advised of the consequences of his failure to complete the form as instructed. He did not do so. His failure was insubordination. While the Organization contended the Claimant was entitled to union representation prior to making a statement under Rule 70 of the Agreement, the Carrier argued that Article VI.A of the Safety Agreement dated April 4, 1996 between the parties stipulated that an employee must complete Form 260.

The Organization argued that the Carrier failed to prove the charges. They argued that no one actually witnessed the accident that gave rise to the Claimant's injury. The Claimant had fully complied with instructions from his

foreman to shut down and clean two MFS 40 cars for travel to the next work location. Thus, according to the Organization, no one witnessed the accident and therefore it was mere speculation to conclude that the Claimant had placed his hand on or near a moving belt when he was well experienced and fully qualified on this type of machine. The Organization also argued the Claimant was not guilty of insubordination as charged in that Rule 70 of the parties' Agreement entitled the Claimant to union representation prior to making a statement.

Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The Carrier demonstrated by substantial evidence that the Claimant violated the Carrier's Standards of Excellence regarding the March 29, 2006 incident. The evidence established the culpability of the Claimant of the charges. Claimant failed to exercise caution in attending to his duties and did not comply with a direct order to complete the Carrier's Injury/Accident Report regarding the injury (Form 26).

The Carrier's Standards of Excellence establish rules of conduct that are expected of all its employees. Clearly the Carrier has a right to expect its employees to operate equipment safely and comply with reporting requirements relating to accidents. Failure to do so endangers the lives of Carriers' employees and could endanger the riding public. In the instant matter the Claimant had an obligation to follow the prescripts of the Carrier's standards of conduct and the record demonstrated that he failed to do so. It further demonstrated the parties'

Safety Agreement required the Claimant to fill out Form 260, the Amtrak Injury/Accident Report. Such form is federally mandated. If the Claimant misguidedly believed he was being aggrieved or mistreated, his recourse was to obey and grieve later through established grievance procedures.

However taking into account the specific circumstances surrounding the incident the Board believes that a modification of the penalty to be appropriate. The Claimant should not take this new lease on employment as a stamp of approval regarding his past misdeeds. He should clearly understand that his reinstatement, pursuant to an Interim Award, dated January 18, 2007, was done on a last chance basis. Any future missteps by the Claimant shall be dealt with severely. Either the Claimant adheres to accepted rules of conduct or he will no longer be an employee with the Carrier.

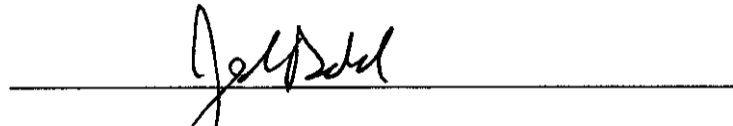
Award

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 January 18, 2007, to restore the Claimant to service.

Reinstatement is on a last chance basis. The Claimant's restoration to service was 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, Organization Member
Dated: 2/26/2007



Rick Palmer, Carrier Member
Dated: 2/26/07