

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: Fred Allen
Award No. 258

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a 30 day suspension and a 3 year disqualification from operating any track equipment assessed on Pennsylvania Coach Yard Truck Driver Fred Allen (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated February 8, 2006. The Organization claims that the Claimant's suspension from his employment and disqualification from operating Track equipment 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 made whole for all wages, benefits, and seniority lost from the time of his suspension and to expunge Claimant's disqualification to operate any and all track equipment for three years.

Background of the Case

Carrier hired the Claimant on March 31, 1977. He works as a Truck Driver in the Penn Coach Yard in Philadelphia, Pa. In addition to being classified as a Truck Driver, Claimant had been qualified to run certain track equipment, including the Jackson 6700 Tamper.

On January 25, 2006, Claimant accepted an assignment to operate the Jackson 6700 Tamper to tamp (flatten) certain mud spots on Track #3 between milepost 86 and 86.6. Carrier alleged that the work performed by Claimant that day was negligent and resulted in unsafe conditions, which caused a slow passage condition to be posted resulting in delays to passengers. A Notice of Investigation was served upon Claimant on February 8, 2006, which charged Claimant with violating Amtrak's Standards of Excellence governing Attending to Duties, Professional and Personal Conduct – Teamwork and Safety, as well as NORAC Rule S, Safety. A hearing was held on April 20 and May 10, 2006. Claimant was found guilty of the charges. On May 25, 2006, Carrier imposed a 30 day suspension and three year disqualification on Claimant from operating any and all Track Equipment beginning on May 25, 2006. The penalty was assessed based upon the aforementioned charges and the Claimant's 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. At the Board's hearing the Claimant was represented by the Organization.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. The record established that on January 25, 2006, Claimant was working as a Truck Driver in the Penn Coach Yard. He also had been qualified to run the Jackson 6700 Tamper. While the Organization claims Claimant was not regularly assigned as a Tamper operator, the fact remains that he received the qualification and volunteered to tamp an area on Track 3 due to the absence of a co-worker. According to Claimant's supervisors, he left 4 unsafe spots. In fact, they stated that the track was left in worse condition than before Claimant worked on them. Pictures of the site showed raised tracks. Claimant advised his foreman of only one problem. Upon inspection two other

major humps were found, forcing Carrier to post an unsafe condition on the area. This in turn led to delays in passenger service. Thus, according to Carrier, not only was Claimant's work negligent, but he failed to report the problems to his supervisors as required by Carrier's operating procedures.

The Organization argued that the Carrier's decision was incorrect, exceedingly harsh and the penalty excessive. They also contend that the Carrier engaged in procedural violations with respect to the imposition of the suspension and the implementation of the Claimant's disqualification that violate the parties' collective bargaining agreement.

With respect to the charges, they argued that Claimant advised the foreman of the problem and that it was the foreman who was responsible for the track. They also claim that the Jackson 6700 had mechanical problems and led to the poor work performed by Claimant. However, Carrier, provided evidence that any prior mechanical difficulties with the Tamper had been fixed. They also provided testimony that the Tamper was checked by a Maintenance of Way Repairman on the morning after the incident and, by the factory representative the following day. Neither one found a problem.

The Organization also alleged that the suspension was imposed immediately rather than being stayed for 15 days from the date of the Notice of Investigation which violated the BMW Agreement and that Claimant was not permitted to

return to work until July 10, 2006, rather than July 3, 2006. However, Rule 73 of the BMW agreement allows Carrier to impose discipline at any time following a decision, without advance notice, when the incident involves a major offense. Carrier proved that this was a major offense. With respect to the time of his return, the Carrier's drug policy required Claimant to be tested upon his return because he was off premises for longer than 30 days. Since he was tested within three days of the end of his suspension, there was no unnecessary delay.

Finally, the Organization contend that the three year period of disqualification should have begun on January 25, 2006 since that was the day he was first restricted from operating such equipment and the restriction should be limited to the Tamper only.

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 and NORAC Rule S, safety regarding the January 25, 2006 incident. The evidence established the culpability of the Claimant of the charges. Claimant failed to discharge his duties properly and failed to report all the problems with his work. This led to delays in passenger service and damage to the tracks.

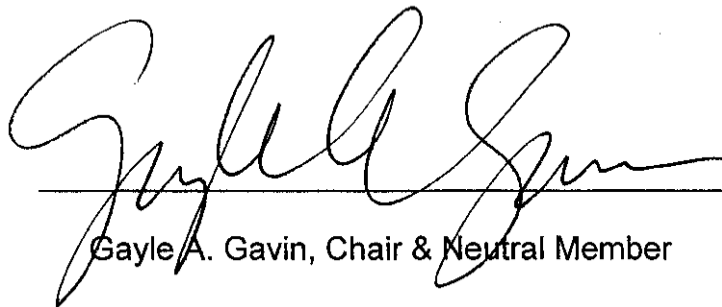
The Organization failed to demonstrate any procedural violations either. The incident in question was a major offense and discipline did not have to be stayed

under the agreement. Moreover, the Carrier's disqualification is appropriate, especially in light of the numerous prior disciplinary incidents Claimant had engaged in with respect to the operation of equipment.

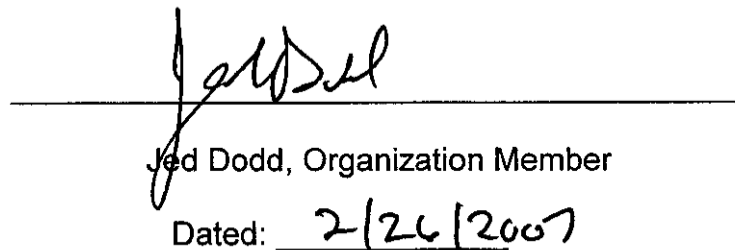
The Carrier's Standards of Excellence establish rules of conduct that are expected of all its employees. Clearly the Carrier has a right to expect its employees to operate equipment proficiently, safely, and to honestly report all problems to supervision. Failure to do so damages the Carrier's reputation, business and may endanger passengers. Given the Claimant's extensive disciplinary history, including eight prior safety and performance issues, the penalty herein is sustained.

Award

The Claim is denied.



Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member
Dated: 2/26/2007

A handwritten signature in black ink, appearing to read "Rick Palmer", is written over a horizontal line.

Rick Palmer, Carrier Member

Dated: 2/26/07