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: Tyler Brooks
Award No. 260

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employes ("BMWE" or the "Organization") appealed the five (5) day disciplinary suspension assessed on Northeast Corridor Trackman Tyler Brooks (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated October 26, 2006. The Organization claims the Claimant was unjustly disciplined and requests the Claimant be made whole for all wages, benefits and seniority lost for the time of his suspension and for the discipline to be expunged from his record.

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Background of the Case

The Claimant was hired by Carrier on July 23, 1976. On October 12, 2006, the Claimant was working as a trackman. At approximately 8:45 am, the Claimant heard that he would be assigned to work on the tie cars. While engaged in conversation with fellow workers, his supervisor heard him state that if he had to work on the tie cars, the "gang's" 70 days of injury free work would "go out of the window." Upon hearing these words, the supervisor asked the Claimant about his statement. Claimant then repeated his remarks to the supervisor. Claimant was charged with violating Carrier's Standards of Excellence and NORAC Rule D. Claimant was found guilty of the charges and assessed a five (5) day disciplinary suspension based upon the charges. All appeals on the property were unsuccessful and the parties agreed to bring the case to this Board for 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 BMWE 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

hereon. The Claimant, Tyler Brooks, was represented by the Organization at the Board's hearing.

The Carrier contended its actions in this case were justified and supported by substantial evidence. The Carrier noted the supervisor's observations were corroborated by a co-worker. The Carrier argued that Claimant, whether kidding or not when he made such a statement, placed it in an untenable situation. It had to determine the risk of having an employee intentionally hurt himself or relieving that person of duty. Carrier contended the 5 day penalty was appropriate because of the nature of the offense.

The Organization argued the record does not support a finding of guilt, noting the Claimant never refused to work on the tie cars. They noted the Claimant did not make his remark to the supervisor, but rather during a discussion with a number of co-workers whom were all griping about their assignments. They noted that one of his co-workers who overheard the comment testified he believed the Claimant was joking at the time.

Upon a review of the entire record, the Board finds the Carrier's determination herein was appropriate. The evidence established that upon learning of his assignment, the Claimant remarked, in a voice loud enough to be heard, if he had to work the job he would get injured. When his supervisor informed him that was not a good thing to say, the Claimant did not advise the Supervisor he was joking. Rather, he repeated the statement again. Given the importance of safety to the Carrier, Claimant's conduct placed Carrier in a difficult position. His remarks could only, at best, be deemed ambiguous. That Carrier took this remark to be serious and a means to avoiding the

assignment was reasonable under the circumstances. Thus, this Board has no basis to disturb the Carrier's findings of guilt or the penalty assessed.

AWARD

The claim is denied in its entirety.

Gayle A. Gavin, Chair & Neutral Member

Jed Dodd, Organization Member

Dated: 4-18-2008

Rick Palmer, Carrier Member

Dated: 4/18/08