

Special Board of Adjustment No. 986

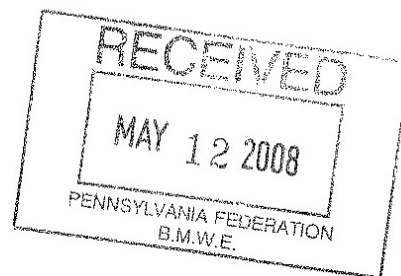
Parties to the Dispute

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

vs.

National Railroad Passenger Corporation (Amtrak)

**Claimant: George Moore
Award No. 264**



Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employes ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Electrician George Moore (the "Claimant") on charges that he violated the Carrier's Standards of Excellence, specifically Trust and Honesty, Attending to Duties, and Professional and Personal Conduct -Teamwork and Amtrak's Policy and Instructions Manual 11.54.0 Highway Vehicle Utilization and Control, Sections 4.2.1, Subsections 4.2.1.2 and 4.2.1.3 set forth in the Carrier's Notice of Investigation dated July 2, 2007. 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, George Moore, is an Electrician in the Electric Traction (ET) Department with 3 plus years of service at the time of the incident. By letter dated July 2, 2007 the Claimant was notified that an investigation was scheduled for July 10, 2007 into the charges that on or about June 14, 2007 in concert with fellow employees, he participated in selling company material at a scrap yard in Darby, Pennsylvania without permission or authority for the purpose of personal profit and additionally he utilized a company truck to travel to the scrap yard during his tour of duty.

The investigation resulted in the Claimant being found guilty of the above charges. The discipline assessed was dismissal, effective July 23, 2007. 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, George Moore, was present at the Board's hearing, was afforded an opportunity to make a statement on his behalf and was represented by the Organization.

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 on June 14, 2007 at approximately 11:57am Amtrak police were notified that 2 white males in an Amtrak vehicle were scraping copper wire at a scrap yard in Darby, Pennsylvania. Video surveillance tape at the scrap yard detailed a male, later identified to be Amtrak Gang Foreman Michael Hughes, taking copper wire from an Amtrak truck. According to the Carrier, Hughes was videotaped putting the wire on a scale used to total up the weight. The record showed he received a weight slip and was paid \$273.00. He exited the yard, entered an Amtrak vehicle and departed the area. Hughes was arrested. In a subsequent interview on June 19, 2007 by the Amtrak police, a fellow employee, James McGilligan, admitted he was with Hughes when they sold copper wire belonging to Amtrak at the scrap yard. In a written, signed statement McGilligan indicated that he, Hughes and the Claimant, George Moore, went to the scrap yard to scrap Amtrak wire and split the money received 3 ways. Additionally, in the Claimant's signed statement, the Carrier maintained, he acknowledged that he was with fellow employees, Hughes and McGilligan, between the hours of 11am and 1pm on the

date in question. This was the time period in which the theft occurred. The Carrier maintained that this established the Claimant's guilt. 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 an Electrician with 3 years of unblemished service when the incident occurred. On June 14, 2007 the Lamokin ET gang including the Claimant traveled to Penn Coach Yard in a six-pack pickup to load linkage material for transport back to Lamokin. Once back to Lamokin the Claimant who possessed a CDL was assigned to drive the boom truck to West Yard. According to the Organization, the Claimant, after being given detailed instructions for getting back to Lamokin because of clearance requirements as to the truck, was advised to take his time. He stopped for lunch and returned to his assignment. Hughes and McGilligan left in the pick up truck identified as the truck involved in the scrap yard incident. The Claimant, in point of fact was paid extra for driving the boom truck on that date. The Organization strongly contended that the Claimant was found guilty based on conjecture and speculation. McGilligan repudiated his original statement implicating the Claimant to not just the police, but through out his testimony during the investigation. It argued that guilt by association has long been rejected by numerous boards as grounds for discipline. Based on the circumstances as supported by the record, the

Organization contended, the Carrier failed to prove the Claimant acted dishonestly.

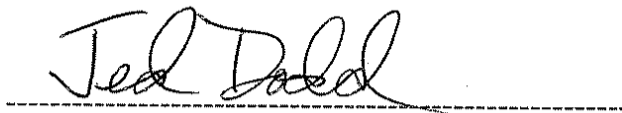
Upon a review of the entire record developed in this case, the Board finds that the Carrier's determination can not be sustained. The evidence simply failed to establish that the Claimant was guilty of the charges. While we are mindful that this Board sits as an appellate body and does not engage in making *de novo* findings of fact, review of the findings made by the Carrier on the property should not be viewed as a rubber stamp. The Board is bound to accept those findings but not if they bear no rational relationship to the evidence of record. The point to be made is that the findings must be based on the record. In the matter before us, the Carrier's findings are premised on supposition and speculation. Guilt by association does not, and should not, establish the requisite proof of culpability. While the Carrier has every right to seek discipline against those that breach the precepts of honesty and trust, it still bears the burden of proving the charges as to the employee being charged. In this instance, the tenuous thread the Carrier attempts to weave between the charges and the Claimant clearly does not meet the standard of proof necessary to find the Claimant guilty.

Award

The claim is sustained. The record, taken in its entirety, failed to establish that the grievant is guilty as charged. The Carrier is directed to restore the Claimant to service with all attendant back pay and benefits.

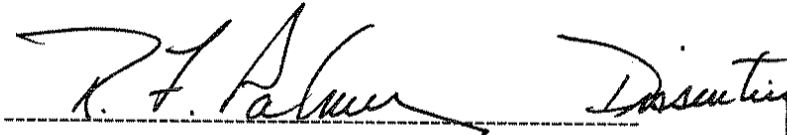


Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Employee Member

5/8/08
Dated



Rick Palmer, Carrier Member

5/8/08
Dated

Dissenting