

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION –

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) – NORTHEAST
CORRIDOR

Claimant: Jeffrey Hurd

Award No. 265

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the 10 day disciplinary suspension and 100 days Class "A" restriction assessed on Mid-Atlantic Division Line (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated December 21, 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his suspension, for the discipline to be expunged from his record, and for the restriction on his Class "A" license be rescinded.

Background of the Case

The Claimant was hired by Carrier on August 30, 1979. On December 4, 2006, the Claimant was assigned to provide protection as a Class "A" Man to the tie pick up unit, which was working at Park and Cain Interlockings. According to the Carrier, Claimant failed to properly protect the crews and obtain necessary written clearances. A Notice of Investigation dated December 21, 2006 was served upon Claimant. After a hearing was concluded on March 8, 2007, Claimant was found guilty of the charges and assessed a 10 day disciplinary suspension and 100 days restriction on his Class "A" status, 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 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 hereon. The Claimant, Jeffrey Hurd, was represented by the Organization at the hearing before the Board.

The Carrier contended its actions in this case were justified and supported by substantial evidence. The Carrier noted that Amtrak's safety rules are of paramount

importance. With respect to this case, Carrier contends the AMT safety rules require the "A" man in charge to maintain visual contact with the crews under his charge and obtain all necessary written clearances noting the crew has been counseled on where it can work both when the power has been shut down and reenergized. Carrier contends the written clearance lacked the signature of Foreman McGuire which was required to be obtained under AMT rules. In addition, Carrier notes the evidence proved Claimant did not maintain visual contact of the crew. In fact, power was restored at the bequest of the power department and not Claimant.

Carrier contended these are serious safety violations. These rules are mandatory and not discretionary. The voltage at issue places employees and the property under extreme danger. Failure to follow the rules places all at risk, according to Carrier. The Carrier further contends the Claimant was given an instruction that should not be viewed as a disciplinary action as the Organization argues. In any event, it contends its disciplinary guidelines do not prohibit its actions in this case.

The Organization argues the disciplinary charges should have been dismissed because Carrier already disciplined Claimant through a verbal counseling that took place on December 7, 2006 and, thus, the formal charges issued herein which resulted in a 10 day penalty constitute "double jeopardy."

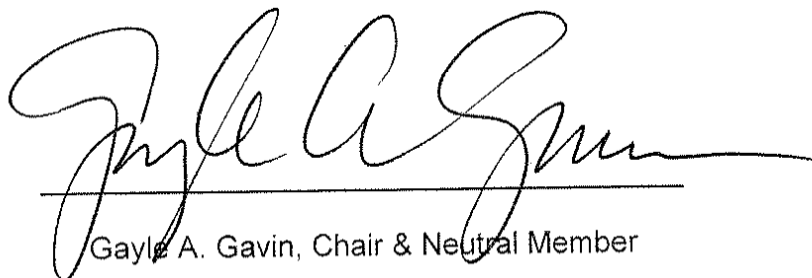
With respect to the merits, the Organization argues Carrier failed to prove the charges. The Organization contends AMT rule 2 does not require the Class A man to obtain the signature of the foreman because the foreman was not within 30 foot of the wire.

Upon a review of the entire record, the Board finds the Carrier's determination herein was appropriate. Ensuring the safety of its employees is a primary responsibility of the Carrier. In order to do this, Carrier has implemented important safety rules – including those at issue that deal with electrical operating instructions. It is paramount employees fully comply with these rules since failure to do so can result in serious injury or death. The evidence clearly showed the rules in question were mandatory and Claimant failed to obtain the necessary clearance and maintain visual contact.

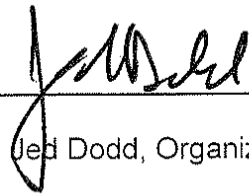
This Board rejects the Organization's contention the charges were defective because of a counseling or instruction received by Claimant on December 7, 2006 prior to the charges being served. Carrier has the right to discipline employees for breaches of work rules, including those related to safety. This right does not and should not preclude Carrier from ensuring employees receive proper instructions regarding safety issues. Thus, this Board finds no basis to disturb the Carrier's findings of guilt or the discipline imposed.

AWARD

The claim is denied in its entirety.

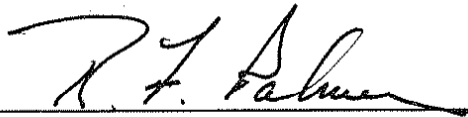


Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member

Dated: 4-18-2008



Rick Palmer, Carrier Member

Dated: 4/18/08