

Special Board of Adjustment No. 986

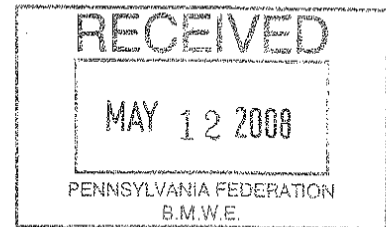
Parties to the Dispute

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

vs.

National Railroad Passenger Corporation (Amtrak)

**Claimant: Alphonso Mackey
Award No. 267**



Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employes ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Trackman Alphonso Mackey (the "Claimant") on charges that he violated the Carrier's Standards of Excellence involving Attending to Duties and Safety, the Carrier's Roadway Worker Protection Manual and the Carrier's Maintenance of Way Employees Safety Rules and Instructions as set forth in the Carrier's Notice of Investigation dated August 6, 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, Alphonso Mackey, is a Trackman with over 31 years of service at the time of the incident. By letter dated August 6, 2007 the Claimant was notified

that an investigation was scheduled for August 16, 2007 into the charges that on July 18, 2007 while working as a Watchman he (1) failed to give timely and sufficient warning to members of a spike gang on an oncoming train to allow them to clear tracks 15 seconds before the train reached the work area; (2) failed to maintain a position that allowed him to view trains approaching in both directions; and (3) failed to devote his entire attention to watching for trains. His failure, the Carrier claimed, jeopardized the safety of his fellow employees.

The investigation was scheduled for August 16, 2007 and mutually postponed. It was held on November 20, 2007 and the Claimant was found guilty. The Carrier assessed the discipline of dismissal, effective November 30, 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 (Amtrak). 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,

Alphonso Mackey, 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 the Claimant on July 18, 2007 was posted at Milepost 7.4 as a Watchman. At approximately 10:15am, the Carrier contended, the Claimant failed to give adequate warning of an oncoming train to allow the gang to clear the track with at least 15 seconds warning. The Carrier maintained that the Claimant in his testimony on the property acknowledged that he could have been slow in acknowledging the advance watchman's disc and further testified that he acknowledged the train as it came past. To acknowledge the train as it came past amounts to an admission, the Carrier argued. Based on the Claimant's actions and his prior disciplinary record, 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 a Watchman on that date, assigned to where the TLM unit spike gang was working. A train was observed approaching at approximately 10:15am from the direction in which the Claimant and three other watchmen were

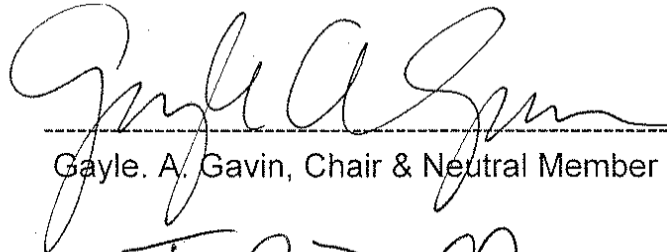
stationed. Following the rules and procedures required each sounded his horn and raised his warning disc (flag). The only witness to actually observe the incident testified that the Claimant did his job properly and in accordance with the requisite rules. Based on the circumstances as supported by the record, the Organization contended, the Carrier failed to prove the Claimant committed the alleged infractions.

Upon a review of the entire record developed in this case, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant was guilty of the charges. We reiterate that this Board sits as an appellate body. We do not engage in making *de novo* findings of fact but rather we sit in review of the findings made by the Carrier on the property. We are bound to accept those findings unless they bear no rational relationship to the evidence of record. In the matter before us, we have accepted the Carrier's findings. Those findings establish that the Claimant violated certain safety protocols. The need for strict adherence to safety protocols is self-evident. There is simply no room on the railroad for error. Digressions, no matter how slight, can have disastrous consequences. That being said, the Board in this limited instance and predicated on the specific circumstances as argued by the Organization believes the penalty should be modified. Although the Board has decided to modify the penalty, it wishes to be clear that we are not condoning the Claimant's misconduct nor are we suggesting that it is not a serious infraction. In point of fact, a word of caution to the Claimant is necessary. The Claimant should be warned that any future misconduct will be dealt with severely. He has clearly

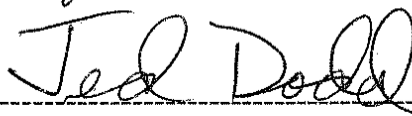
exhausted any good will that may be evidenced herein. His reinstatement is on a last chance basis. Either the Claimant will adhere to the governing rules of acceptable conduct and safety or his employment with the Carrier will come to an end.

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. Additionally, the Claimant shall be deemed permanently disqualified as a Gang Watchman. The Carrier is directed to restore the Claimant to service. The Claimant's restoration to service is on a last chance basis 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, Employee Member

5/8/08
Dated



Rick Palmer, Carrier Member

5/9/08
Dated