

Special Board of Adjustment No. 986

Parties to the Dispute

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

vs.

National Railroad Passenger Corporation (Amtrak)

**Claimant: William Bryant
Award No. 275**

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Track Foreman William Bryant (the "Claimant") on charges of violation of Amtrak's Standards of Excellence involving Attending to Duties, Safety, and Professional and Personal Conduct; NORAC Operating Rules; various General Orders; and the Carrier's Roadway Worker Protection Manual as set forth in the Carrier's Notice of Investigation dated September 17, 2008. 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, William Bryant, is a Trackman with approximately 29 years of service at the time of the incident. By letter dated September 17, 2008 the

Claimant was notified that an investigation was scheduled for September 26, 2009 into the charges that on August 28 through the morning of August 29, 2008 while working as a Track Foreman he failed to properly repeat back to the Train Dispatcher and failed to properly record on his Form D the correct limits of his out of service track. His failure, the Carrier claimed, jeopardized the safety of himself and his fellow employees.

The investigation was postponed twice by the Organization. It was held on January 22, 2009. By letter dated February 4, 2009 the Claimant was found guilty and assessed the discipline of dismissal, effective immediately. 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,

William Bryant, 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 the above-cited tour of duty failed to properly repeat back to the Train Dispatcher and failed to properly record on his Form D the correct limits of his out of service track. The Claimant, the Carrier argued, was granted authority to hold out of service No. 2 Track between 'JO' and 'F' from the Train Dispatcher. The Claimant incorrectly stated to the Train Dispatcher and then incorrectly recorded on the requisite Form D that he was authorized out of service track from 'JO' to 'Harold'. The mistake was later discovered by a Maintenance of Way Pilot when he received an improper signal and radioed for confirmation from the Claimant. 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. While it readily admitted the potential for tragic consequences as a result of the inadvertent errors, nothing did happen. Additionally the Organization contended that the Carrier's treatment of the two men involved, the Claimant and the Dispatcher, was a model of disparate treatment and an abuse of the Carrier's discretion. The

Carrier dismissed the Claimant; yet the Dispatcher received a fifteen day suspension. Where discipline is excessive, capricious or improper such as was demonstrated in this instance, it cannot stand. The Organization offered numerous Board citations to support its position.

Upon a review of the entire record developed in this case, the Board finds that the evidence established that the Claimant was guilty of the charges.

Subsequent review of the entire record before the Board revealed that the Dispatcher had given the Claimant out of service limits between "JO" and "F" while the Claimant had repeated back between "JO" and "Harold". Neither man realized his mistake. The evidence established 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 of what magnitude, can have disastrous consequences. That there were not tragic consequences in this matter, in no way dulls the magnitude of the violations. Additionally the Board disagrees with the Organization that the Claimant was subjected to disparate treatment regarding the penalties assessed against the Claimant as opposed to the Dispatcher. It is always dangerous to compare penalties in these types of situations. Other considerations come into play, including years of service, charges assessed as well as the employees' disciplinary records. Under the circumstances as presented herein it can not be said that there was disparate treatment involved.

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. His reinstatement is on a last chance basis. Additionally, while he is ordered restored to service, he is forever barred from any position requiring qualification as to NORAC operating rules.

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 from any position requiring qualifications on NORAC operating rules. 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

10/14/09
Dated



Rick Palmer, Carrier Member

10/14/09
Dated