

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: John Rivera
Award No. 276

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on ET Lineman John Rivera (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated August 5, 2008. The Organization claims that the Claimant was unjustly dismissed from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be restored to service, to be made whole for all wages, benefits, and seniority lost, and that the discipline assessed is expunged from his record.

Background of the Case

The Claimant was hired by Carrier on April 24, 2006. At the time of the incident he held seniority in the Electric Traction Department and was working on ET

Gang P255 as an ET Trainee at Sunnyside Yard in New York City. The Carrier charged that on July 17, 2008 he reported for his overnight tour of duty and was assigned to work in the vicinity of 15 Track in Penn Station, New York.

Approximately two hours into his tour and prior to reporting to his assignment at 15 Track, the Claimant is alleged to have abandoned his position and to have left the property, claiming illness. It was charged that he never contacted his supervisor or anyone up the chain of command as required by two standing, written departmental orders. The Carrier claimed his actions were insubordinate, negligent and/or a dereliction of duty, and dishonest in violation of Amtrak's Standards of Excellence. Charges were preferred against the Claimant. After two mutual postponements, an investigation was held on February 11 and March 21, 2009. By letter dated April 3, 2009, Claimant was found guilty of the charges and the Carrier assessed a discipline of dismissal. 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 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 Employees 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, John Rivera, was present at the Board's hearing, was ably represented by the Organization, and was afforded an opportunity to make a statement on his own behalf.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. It argued the record demonstrated that the Claimant on his July 17 through July 18, 2009 tour of duty abandoned his position two hours into his tour and left the property without permission. His actions were contrary to two written directives. These directives prohibited employees from leaving their work locations and/or marking off prior to the end of the tour of duty for any reason without direct and immediate contact with their supervisor or other member of the management chain of command and receiving permission to leave. Foremen were not authorized to give permission. The memoranda advised employees that violations would be considered insubordination, resulting in formal disciplinary action. The Carrier contended that the directives were distributed to the Claimant's gang as well as discussed. Additionally they were posted in headquarters. The record amply demonstrated the Claimant violated the memoranda and was guilty of the proffered charges. The Carrier further argued that the Claimant was a very short termed employee who had two prior disciplines, both resulting in 30 day suspensions. Accordingly, Carrier posited

that dismissal of Claimant was not arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

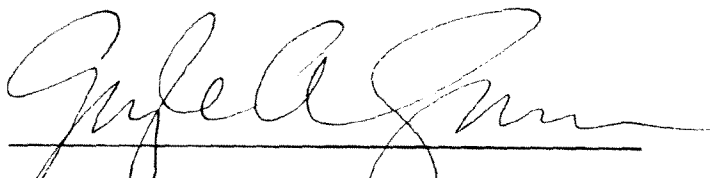
The Organization argued that the Claimant was not guilty of the charges and alternatively, even if the Board so finds, the penalty was exceedingly harsh. The Claimant was not insubordinate. On the night in question the Claimant was ill when he arrived at work and as the evening progressed he became increasingly more ill. Approximately two hours into his tour he was unable to concentrate and perform his duties in a safe manner. The Claimant, rather than risk injury to himself or others, decided to mark off. However when he attempted to contact his foreman by cell phone to advise him of his desire to leave he was unsuccessful in contacting him. He then advised a coworker that he was marking off.

According to the Organization, his foreman was aware that he had left and it obviously did not create any type of hardship according to the testimony. Further, examination of the one memorandum disclosed that it was dated 2004 before the Claimant was hired and even, more importantly, the Carrier failed to prove he had knowledge. As to the penalty, while the Carrier argued that the Claimant had two prior instances of discipline being assessed against him, making dismissal appropriate for a short termed employee, the Organization contended that such conduct was not similar in kind, defeating the very purpose of discipline – to rehabilitate, correct and guide an employee into becoming a good, productive employee. Under such circumstances as presented, the discipline of dismissal clearly serves only to punish rather than rehabilitate.

Upon a careful review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The evidence established by supportive evidence that the Claimant failed to adhere to the procedures and prescripts iterated in the memoranda in question. Additionally the record indicated that the Claimant had been noticed of the need to contact a supervisor or one higher in order to mark off early. This, the evidence clearly demonstrated, the Claimant did not do. Finally while the Claimant had attempted during the investigative hearing to show that he had tried to call his foreman on the date in question, the phone records he offered certainly failed to establish such fact. In other words he marked off with out benefit of speaking to anyone in any semblance of authority. Had this infraction been the Claimant's first in his short tenure with the Carrier, the Board very well might have considered the discipline assessed to be exceedingly harsh, but prior to the matter in question his record showed two serious disciplines assessed against him. Under such circumstances, this Board cannot find that the Carrier acted arbitrarily or unreasonably when it assessed the discipline of dismissal against the Claimant.

Award

The claim is denied.



Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member

Dated: 10/14/09



Rick Palmer, Carrier Member

Dated: 10/14/09