

Special Board of Adjustment No. 986

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Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –  
NORTHEAST CORRIDOR

---

Claimant: Jonathon Scott  
Award No. 279

**Organization's Statement of Claim**

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a thirty day suspension assessed on Trackman Jonathon Scott (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated February 26, 2009. The Organization claimed that the Claimant was unjustly disciplined from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be made whole for all wages, benefits, and seniority lost from the time of his suspension to his reinstatement, and that the discipline assessed is expunged from his record.

**Background of the Case**

The Claimant was hired by Carrier on May 10, 1999. By letter dated March 5, 2009, the Claimant was charged with certain acts of insubordination and conduct

unbecoming an Amtrak employee on February 5 into February 6, 2009 when he was alleged to have walked off his assigned Watchman post although directed not to do so and to have been confrontational toward his fellow employees on that same tour of duty. The Carrier charged that his belligerent conduct disrupted the workplace and compromised the safety of his fellow employees. An investigation was held on March 5, 2009 and by letter dated March 19, 2009, Claimant was found guilty of the charges and the Carrier assessed a 30-day suspension for violating the Carrier's Standards of Excellence, Amtrak's Roadway Worker Protection Manual Section 329, and violation of Amtrak's Maintenance of Way Employees Safety Rules and Instructions. 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 BMWF 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, Jonathon Scott, was ably represented by the Organization before this Board.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. It argued the record demonstrated that the Claimant was assigned as a Watchman covering High Speed Surfacing Gang Y-052 between Branford and Gilford, CT., at MP 84.3. According to the Carrier he started immediately complaining about the cold weather and indicated he needed relief. Shortly thereafter orders were issued for Trackmen including Watchmen to report to the head end of the equipment to fork ballast. Tracks 1 and 2 were out of service and the track cars were expected to come down Track 2 but not go beyond MP 84. The Claimant became agitated about the track cars and started using profanity. While the Claimant wanted a second job briefing over this move, it was explained to him by a supervisor and a foreman, the Carrier posited, that one was not necessary. Then the Claimant became belligerent and confrontational disrupting the workplace and compromising the safety of his fellow employees. Accord to the Carrier, he proceeded to take his vest off and vacate his assignment without following proper procedure although instructed not to do so. His actions on such occasion violated Amtrak's Standards of Excellence as well as various rules under Amtrak's Roadway Worker Protection Procedure Manual and its Maintenance of Way Employees Safety Rules. Accordingly, Carrier argued that the charges were proven by substantial evidence and a 30

day suspension of Claimant can not be considered arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

The Organization argued that the Claimant never left his post unattended as he was properly relieved by Mr. Alexander. The Claimant had to go to the bathroom and was relieved before he left his post. In actuality, it contended, there was no need for a Watchman as the track was out of service. Additionally the Claimant requested a second job briefing which he was entitled to and the Carrier would not grant one. He did not willfully disobey an order and he can not be considered insubordinate. Under these circumstances, the Organization argued, the charges should not be sustained. The Claimant has no prior record and should not be disciplined.

Upon a careful review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The evidence established that during his February 5 through 6, 2009 tour of duty the Claimant displayed rude, belligerent and aggressive conduct toward a supervisor and a foreman and he also walked off his Watchman post without being properly relieved.

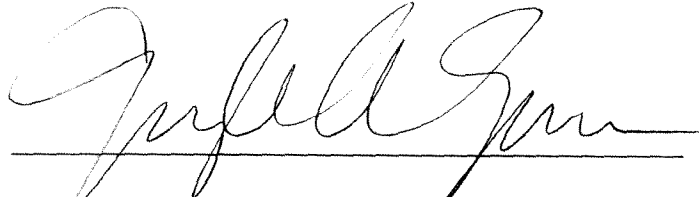
The Carrier's Roadway Worker Protection Manual requires watchmen to give their full attention to watching for trains, engines and other maintenance machinery and to warning roadway workers. Watchmen are required to stay in place until instructed by the employee in charge that on-track safety is no longer

necessary or until the person in charge assigns another watchman in place and properly equipped and watching for trains. Then, and only then, can the original watchman leave his post. On the railroad a momentary lapse can have disastrous consequences. The need for strict adherence to the safety protocols that are in place is apparent. There is simply no room for error. That the track was out of service in the instant matter, in no way relieved the Claimant from following the requisite procedure for being relieved. The Claimant was directed not to walk off his watchman post and he disobeyed the order. Additionally his belligerent and aggressive conduct toward a supervisor and a foreman clearly violated the Carrier's Standards of Excellence.

Based on the record before the Board, the charges were proven by substantial evidence. As to the penalty, the Claimant has ten-plus years of service with no prior disciplines assessed against him. While the nature of these charges are serious, this Board would hope that Claimant's indiscretion is an anomaly, if his previous ten years of service can be viewed as a reliable indicator. The Board was advised that he has already served the 30 day suspension. With that in mind, the penalty will remain on the books for a period of one year from the final date of this award. Should there be no additional acts of misconduct during that period, the penalty shall be reduced to a fifteen day suspension with back pay due and owing.

**Award**

The claim is denied in part and sustained in part.

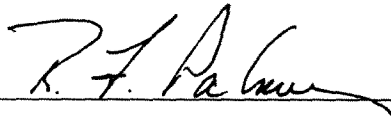


Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member

Dated: 10/14/09



Rick Palmer, Carrier Member

Dated: 10/14/09

*Dissenting*

*The decision of the majority is an extension of leniency, with the potential for monetary reward for compliance with the rules for a year - something expected of every employee all the time.*