

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) – NORTHEAST CORRIDOR (“CARRIER”)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 282
Employee: William Leischner

Neutral Member: Barbara Zausner
Carrier Member: Richard Palmer
Organization Member: Jed Dodd

STATEMENT OF CLAIM

1. The dismissal of B&B Foreman William Leischner under date of August 27, 2009 for his alleged violation of Amtrak’s Standards of Excellence Policy entitled Professional and Personal Conduct and an alleged violation of Amtrak’s Workplace Violence Policy in connection with an incident involving Supervisor Rick Larkin at the Maintenance of Way base in Groton, Connecticut on July 24, 2009 was arbitrary, capricious, unwarranted and in violation of the Agreement (System File NEC-BMWE-SD-4855D)
2. Because of the Carrier’s violation cited in Part 1 above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired and shall be made whole for all wage loss suffered.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The claimant in this case, William Leischner, was charged with physically assaulting and verbally threatening Supervisor Rick Larkin on Friday, July 24, 2009. He was removed from service by letter dated August 27, 2009. The dismissal was appealed.

The Organization raises a procedural issue. It argues that the Claimant was not notified of his dismissal by hand delivered letter or by registered mail as required in Rule 69 (Major Offenses – Held Out of Service). It cites testimony of Mr. Rezendes that he did not hand deliver a written notice to Mr. Leischner instructing him that he was out of service.

The Carrier maintains the Claimant was given proper and timely notice of his dismissal as required by Rule 71. The Claimant acknowledged receiving verbal notification. There is no evidence he was prejudiced by the absence of written notification. The Carrier has a zero tolerance policy for threats and violence. It cites its responsibility to provide a safe workplace. The charges against the Claimant, an employee with five years of service, are serious and support the Carrier's decision to terminate the Claimant's employment.

The Organization also asserts the Carrier has not met its burden of proving the charges. Moreover, the penalty of dismissal is “arbitrary and clearly unwarranted.” The Organization points to a letter from Supervisor Larkin that explains the circumstances surrounding the incident. There are additional letters from other Amtrak managers supporting the Claimant.

A majority of the Board concludes that the Claimant should be reinstated without back pay. This decision is based on the September 10, 2009 letter from Supervisor Larkin in which he expresses regret that he called his manager and that the call resulted in Mr. Leischner’s dismissal. He “adamantly” refused to press charges against the Claimant at the time of the incident. He concluded, the “loss of Bill [Leischner] is too high a price to pay.” Mr. Leischner expressed sincere regret for the incident at the hearing.

Other managers wrote letters attesting to the Claimant’s good work record and character. After his dismissal, Mr. Leischner completed a number of courses on workplace violence, communication at work, behavior and anger management, and others. We find these mitigating factors sufficient to modify the dismissal.

AWARD

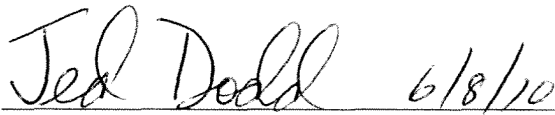
The Claim is sustained in part and denied in part. Claimant shall be returned to service without back pay.



Barbara Zausner, Neutral Board Member
May 27, 2010



For the Carrier
Richard F. Palmer, Director – Labor Relations



For the Organization
Jed Dodd, General Chairman