

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

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

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 288
Employee: Thomas Goodrich

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

STATEMENT OF CLAIM

- 1- The dismissal of Claimant T. Goodrich for the alleged violation of Amtrak’s Standards of Excellence, section ‘Attending Duties’ and the alleged failure to follow the Central Division Chicago Terminal Maintenance of Way General Order 3-S05 (Section 6.3.3) Working Limits is excessive, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File BMW-E-557D).
- 2- As a consequence of the violation in Part I above, Mr. Goodrich shall be exonerated of all charges in accordance with Rule 15(6) of the Agreement and be reimbursed for all wage loss sustained as a result of the Carrier’s actions.

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, Thomas Goodrich, was employed by the Carrier for approximately thirty years. At the time of the incident he was regularly assigned as a track foreman. The charges stem from his failure to have scaffolding material and a non-shunting barricade removed from the foul of Station Track 4 prior to cancelling Track and Time Authority #1343 and returning the track to service on January 18, 2010.

The Carrier relies on the testimony of Supervisor Harold Kirman and Engineer Track William Roche. Mr. Roche testified that the Claimant should have removed the barricade and scaffolding before the track was returned to service and that the track and time protection should have been used when items, people or machinery are left in foul of track. Further, whether the General Order in effect covered 50 feet or 85 feet is irrelevant as the track should have been protected with a track and time authority when the barricade and scaffolding were left fouling the track.

The Carrier also points to the Claimant's admission and the importance of safety rules. The grievant's prior record of discipline includes numerous incidents involving Amtrak's Standards of Excellence

involving attending to Duties, Professional and Personal Conduct, and two incidents involving the same rule he is charged with violating in this case.

The Organization contends the Claimant was told by Supervisor Coburn that a new General Order Bulletin was going to be put into effect for Track 4 at the Chicago Terminal and that it was supposed to instruct trains to stop eighty-five feet shorty from the bump post. The Claimant was following his supervisor's orders. He testified that he left the objects in the track because he believed they were properly protected by the General Order Bulletin and in light of his instructions. It maintains dismissal is unwarranted in this case. The Organization also points out that there was no potential danger for the barricade, scaffolding, track structure, train or passengers because the barricade and scaffold were within the protected limits of the General Order Bulletin and the trains were required to operate in the area at a very slow speed. The Claimant inadvertently left the barricade and scaffolding in the foul of the track.

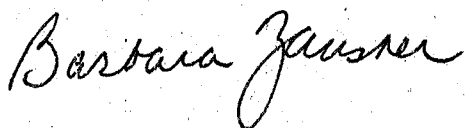
The Organization also emphasizes the Claimant's thirty years of satisfactory service.

A majority of the Board concludes that the Claimant should be offered reinstatement without back pay and that he should be barred from working as a foreman. He should not, however, be barred from bidding into other positions in which he holds seniority. The Board agreed that his limitation would be that he could not work as a foreman.

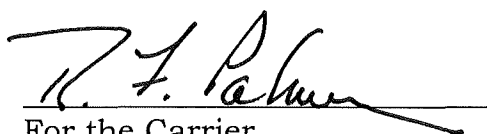
This decision is based largely on the Claimant's long seniority (almost twenty years with Amtrak and eight years with another carrier). The limitations are imposed in consideration of the critical importance of safety rules.

AWARD

The Claim is sustained in part and denied in part. Claimant shall be returned to service without back pay and on condition that he may not hold a foreman position. His seniority and other benefits shall remain intact.



Barbara Zausner, Neutral Board Member
September 27, 2011



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



For the Organization
Jed Dodd, General Chairman