

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. 289

Employee: William J. Lacomchek, Fr.

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

STATEMENT OF CLAIM

- 1- The dismissal of Mr. W. Lacomchek, Jr., for alleged violation of Amtrak’s Standards of Excellence, Sections ‘Safety’, ‘Attending to Duties’, ‘Teamwork’ and ‘Conduct’; Amtrak’s Workplace Violence Policy and NORAC Rules D, E and S is excessive, unwarranted, on the basis of unproven charges and in violation of the Agreement. (System File BMW-4897D).
- 2- As a consequence of the violation referenced in Part I above, Claimant Mr. Lacomchek, Jr., shall be reinstated to full service immediately with full seniority unimpaired and made whole for all wages, benefits and seniority lost for the time of his termination and for the discipline to be expunged from his record.

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, William Lacomchek, Jr., was assigned as an electric traction lineman (ETL) headquartered at the Penn Coach Yard in Philadelphia, PA. He was dismissed for alleged violation of Amtrak's Standards of Excellence, Sections 'Safety', 'Attending to Duties', 'Teamwork' and 'Conduct'; Amtrak's Workplace Violence Policy and NORAC Rules D, E and S. Specifically, he acted in a belligerent and confrontational manner that was intimidating and threatening towards fellow employee Jeff Hurd during a telephone conversation on March 31, 2010. The Carrier maintains that dismissal is commensurate with the seriousness of the offense. It cites his prior record of discipline, including discipline for similar offenses.

The Organization asserts that the language involved in the incident between Hurd and the Claimant was shop or locker room talk that they routinely used. It cites testimony in support of that claim and to confirm that neither made any real threats to the other. Mr. Hurd's testimony at the formal hearing is quoted. The Organization also notes the Claimant's long service.

The Organization argues that dismissal is excessive and based on charges that were not proven.


Further in the Claimant's defense, the Organization notes that the Claimant apologized to Mr. Hurd the day after the comments were made. He has learned his lesson. A petition in support of the Claimant which is signed by a number of the Claimant's coworkers is offered in evidence.

The Board agrees with the Carrier that it has a duty to protect employees from violence and threats thereof in the workplace. Threatening language is not shop talk and is not an appropriate form of joking around. Termination of employment is routinely upheld by arbitrators when there is sufficient evidence to prove that one employee has threatened another.

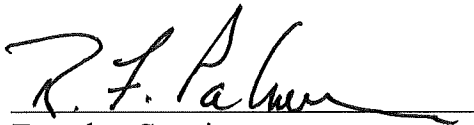
In this case, a majority of the Board concludes that the Claimant shall be reinstated without back pay or benefits and with a last chance warning that he will be subject to dismissal if he engages in proven similar conduct in the future.

AWARD

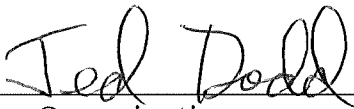
The Claimant shall be reinstated without back pay or benefits and with a last chance warning that he will be subject to dismissal if he engages in proven similar conduct in the future.



Barbara Zausner, Neutral Board Member
September 27, 2011



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



For the Organization
Jed Dodd, General Chairman