

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. 290
Employee: Bret Haller

Neutral Member:	Barbara Zausner
Carrier Member:	Mark L. Johnson
Organization Member:	Jed Dodd

STATEMENT OF CLAIM

1- The dismissal of Bridge and Building (B&B) Mechanic B. Haller for conduct unbecoming an Amtrak employee when on December 28, 2009 he allegedly acted in a threatening and/or hostile manner toward a fellow employee and intentionally damaged Amtrak property at the B&B headquarters, Union Station, Washington, DC was arbitrary, capricious, excessive, based on unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-4884D).

2- As a consequence of the violation referred to in Part 1 above, Claimant Haller will be reinstated to service with all benefits and seniority rights unimpaired and compensation for all wage loss suffered and his record will be cleared of the charges leveled in this instance.

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, Bret Haller, was assigned as a B & B Mechanic. On December 28, 2009 Mr. Haller allegedly “assumed the attitude of sleep while on duty and intimidated and threatened violence toward his Foreman and intentionally damaged Amtrak property. Further, he allegedly was insubordinate when he refused to attend the daily job briefing as directed by his Foreman and when he abandoned his assigned work position and left the property without permission.

The Claimant was notified of the formal investigation. The hearing ultimately was held on March 11, 2010 in Washington D.C.

The Carrier relies on the testimony of Foreman Ralph Painter who found Appellant sleeping in a work trailer with the light out and a jacket over his face when he was supposed to be at a job briefing. When Painter returned and turned the light on again the Appellant said he would “beat [his] ass” and “knock the f----- lights out.” Foreman Cornelius, who witnessed the incident, corroborated Painter’s testimony. \

The Carrier also cites the Appellant’s admission that he broke the light. Notwithstanding his claim that he left work to go to the EAP for assistance, he left his

position without permission. The Carrier points to other SBA decisions upholding discharge for reasons similar to those involved here.

The engineers who testified for the Organization all said they did not see or hear anything specific, other than raised voices and the sound of glass breaking.

The Organization contends the Carrier did not produce “a single witness who could positively corroborate key elements of Forman Painter’s version of the incident.” It also claims there was “history” between the Appellant and Foreman Painter that would “provide ... impetus for Foreman Painter to introduce embellished/untruthful testimony.” We find no substantiation for this claim in the record. The hearing officer found that Painter offered credible testimony, that it was substantially corroborated by Foreman Cornelius, that both their written statements are consistent with their oral testimony; and that the Appellant admitted damaging the lights. Moreover, the Appellant left work without permission.

The Organization points to awards of Boards that have rejected uncorroborated or hearsay testimony; rejected charges based “solely on the unsubstantiated evidence of a sole witness.” That is not the case here.

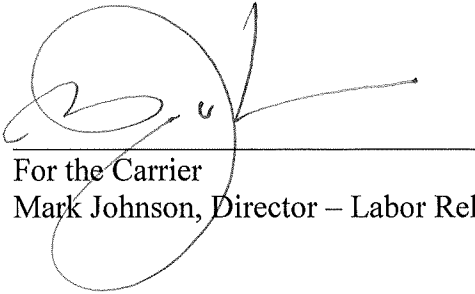
A majority of this Board concludes that the charges are proven on the record and there is no basis to disturb the Carrier’s decision to dismiss Mr. Haller.

AWARD

The Claim is denied.

Barbara Zausner

Barbara Zausner, Neutral Board Member
August 1, 2013



For the Carrier
Mark Johnson, Director – Labor Relations

Jed Dodd

For the Organization
Jed Dodd, General Chairman

