

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. 294
Employee: Scott Whaley

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

STATEMENT OF CLAIM

1- The discipline (dismissal) imposed upon Mr. S. Whaley by letter dated August 18, 2011 in connection with charges of alleged dishonesty and conduct unbecoming and alleged violation of Amtrak’s ‘Standards of Excellence’ pertaining to the sections entitled Trust and Honesty, Professional and Personal Conduct and Attending to Duties during a structural welding re-qualification test on May 25, 2011 was arbitrary, capricious, excessive and in violation of the Agreement (System File NEC-BMWE-SD-4962D).

2- As a consequence of the violation referred to in Part 1 above, Claimant S. Whaley shall now be reinstated to service with all rights and benefits fully restored and he shall be compensated 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, Scott Whaley, was assigned as a B & B Mechanic. On May 25, 2011 Mr. Whaley was observed cheating on his welding requalification test. The Claimant was notified by letter dated June 1, 2011 to appear for an investigation into his alleged violation of Amtrak's Standards of Excellence involving Trust and Honesty, Professional and Personal Conduct (Teamwork)(Conduct) and Attending to Duties. Based on the evidence presented at the investigation, the Claimant was found guilty of the charges and was assessed the discipline of dismissal in all capacities effective August 18, 2011.

On May 25, 2011, the Claimant returned to welding school to re-qualify on structural welding. The Claimant received a Job Briefing and was given verbal and written instruction by Senior Engineer of Welding Practices Ken Gaglione before he took the test. After approximately three hours, the Claimant informed his supervisor, Brian Earp, that he had finished his vertical test and would be starting the overhead portion of the test. Both Mr. Gaglione and Mr. Earp were absent from the testing

room for a period of time. When Mr. Earp returned he observed the Claimant welding from the flat position. Upon further examination by Mr. Earp, the overhead test plate was found to have been welded from the flat position. In structural welding, no flat welds are necessary to re-qualify. The Claimant was immediately sent home and informed that he could no longer qualify since this was his second attempt at passing his welding test.

The Carrier points out that the Claimant acknowledged having received and understood instructions for the re-qualification test. The Claimant admitted to the error and apologized. The Claimant explained that his father-in-law had passed away the week before and that he was rushing to complete the test. As a result of rushing, the Claimant alleges he forgot to position the weld overhead.

The Carrier cites the extensive and complete record corroborating the actions by the Claimant. These actions, the Carrier contends, violate the Carrier's Standards of Excellence governing Trust and Honesty, Professional and Personal Conduct (Teamwork)(Conduct) and Attending to Duties. The Carrier argues that dishonesty in any form breaks the bond of trust necessary in an employee-employer relationship.

The Organization cites the Claimant's unblemished record. The Organization argues the Claimant was acting under significant distress

and with great haste due to the recent loss of a family member. In so doing, he made a mistake, which he freely acknowledged making all along. The Organization argues that the Claimant had no ill intention.

The Organization does not dispute that the Claimant's actions were an error. It points out the Claimant is remorseful and would like another chance to show he can be an honest employee.

A majority of the Board concludes that there is sufficient evidence in the record to support the charge that the Claimant violated the Standards of Excellence governing Trust and Honesty, Professional and Personal Conduct (Teamwork)(Conduct) and Attending to Duties.

The Claimant's allegation that he forgot to do the weld in the overhead position is not deemed credible as he had just reported to a supervisor his intent to do so.

AWARD

The Claim is denied.

Barbara Zausner

Barbara Zausner, Neutral Board Member
January 31, 2012

R. F. Palmer 2/3/2012

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

Jed Dodd 2/3/12

For the Organization
Jed Dodd, General Chairman