

Special Board of Adjustment 928

Award no. 489

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(WARREN ROBB – Claimant)

Statement of Claim:

Claim presented by the Brotherhood of Locomotive Engineers and Trainmen (“Organization”) on behalf of Amtrak Passenger Engineer Warren Robb (“Claimant”) for the rescinding of the discipline imposed of: ”termination of your employment with the **National Railroad Passenger Corporation**” as stated in the dismissal letter dated November 17, 2006, under the signature of Darryl Pesce, Mid-Atlantic General Superintendent, with full compensation for time lost, full credit toward vacation entitlement, health and welfare credits during the period held out of work, and clearing of Claimant’s personal record as to any reference relative to the alleged violation.

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Special Board of Adjustment 928 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident that led to the suspension in this matter, Claimant was a Passenger Engineer for over 14 years with 19 years of service with the Carrier.

A review of the record shows the following facts. Claimant worked as a passenger engineer from Pittsburg to Harrisburg on October 3, 2006. He initially stayed in the same room as passenger conductor Diane Calhoun at the Best Western Inn, a company paid hotel. Claimant and Ms. Calhoun had been drinking at a local

establishment and had an altercation in the hotel room. Police were summoned and Ms. Calhoun was arrested and held until an arraignment the following morning. Claimant requested a separate hotel room that was paid by the Carrier. Claimant notified Crew Management Services that MS. Calhoun was ill and she was marked off her regular assignment. Ms. Calhoun was still in custody at the time of Claimant's call.

Claimant was sent a Notice of Formal Investigation dated October 16, 2006, regarding charges related to the above events. After one postponement, the hearing was held on November 10, 2006. The Carrier notified Claimant in a letter dated November 17, 2006, that the Charges were sustained. Claimant was assessed the discipline of termination from service.

The Organization argues that the charged violations must fail because of a certain procedural issues – including the failure to produce at hearing the hotel night clerk or the local patrol officer from the responding police department. Further, admission of written statements was error because the declarant could not be cross examined. Further, Claimant could not be found to be in violation of any Carrier rules where he was the victim of Ms, Calhoun's attack and tried to pay for the hotel room the following week. In addition, his call to CMS was appropriate because Ms. Calhoun was unavailable to work.

The Carrier counters that the procedural objections must be rejected. The Carrier maintains that the hotel supervisor testified about the report of the unavailable night clerk and his own observations when he went to the room. The police report discusses the facts surrounding the arrest and the Organization did not request the presence of the patrol officer. The Carrier also maintains that Claimant committed the infractions and that the discipline was appropriate.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there were no procedural defects which void the discipline. There is nothing to support the contention that Claimant was prejudiced by the admission of the statement of the night clerk or the arrest report of the patrol officer. The record shows that Claimant was offered a full and fair hearing.

There is substantial evidence in the record that Claimant engaged in an altercation with Ms. Calhoun, obtained lodging for which he was not entitled and provided false

information to CMS that Ms. Calhoun was sick when she was actually in the local lockup awaiting arraignment on charges related to the altercation.

The Organization contends that the discipline was excessive in light of the minor nature of the occurrences – Ms. Calhoun, not Claimant, was arrested. Ms. Calhoun, not Claimant, is barred from the hotel. Ms. Calhoun, not Claimant, is the culpable party.

As stated above, this Board is limited in its review. While Claimant might have been on the receiving end of the altercation, there was still an altercation. Perhaps there might be an argument for a reduced discipline if that altercation were the only issue before this Board. However, there are more facts to the incident. The evidence shows that Claimant fabricated Ms. Calhoun's illness to CMS when he called and said that Ms. Calhoun was too ill to work and unable to report. The evidence showed that Ms. Calhoun was unavailable to work because she was in custody on the previous evening's arrest. That intentional deception cuts against any argument that the decision to terminate was inappropriate and an abuse of discretion.

Accordingly, after a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: There is nothing in the record that shows the Carrier to be acting unreasonably, arbitrarily or capriciously by dismissing the Claimant from service. The imposed discipline did not constitute an abuse of the Carrier's discretion.

Award:

Claim is denied.



Brian Clauss
Chairman and Neutral Member

Mark B. Kenny
General Chairman
BLET
Organization Member

Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

Dated this _____ day of _____ 2008