

Special Board of Adjustment 928

Award no. 494 and 495

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(Dominic Esposito – Claimant)

Two matters are consolidated in this award as follows:

Statement of Claim:

Claim presented by the Brotherhood of Locomotive Engineers and Trainmen (“Organization”) on behalf of Amtrak Passenger Engineer Dominic Esposito (“Claimant”) for the rescinding of the discipline imposed of: ”dismissal in all capacities effective immediately” as stated in the letter dated January 16, 2006, under the signature of General Superintendent, Frederick Fournier, 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 that the following facts are not in dispute. Claimant accepted an Extra Board assignment for June 10, 2006 and failed to appear. He did not notify the Carrier manager or supervisor to notify them of his absence. On June 16, 2006, Claimant submitted a Paperless Time Ticket requesting payment for the day he did not report on June 10, 2006. Claimant was sent two Notices of Formal Investigation, one dated June 16, 2006,

regarding the failure to report for duty, and one dated June 22, 2006, regarding the submitted the pay claim. Claimant was advised in each notice that an investigation would be held “to develop the facts and determine your responsibility, if any, in connection with the following [incident]. Claimant was notified that one charge would be investigated in each matter – failure to report and stealing, respectively.

After numerous postponements, the hearings were held on January 11, 2007. The Carrier notified Claimant in letters dated January 11, 2007, that the Charges were sustained. Claimant was assessed the discipline of termination from service in separate letters on the same date.

The Organization argues that the charged violations must fail because the Claimant was prejudged because he was removed from service prior to the Investigation. Further, the proof that Claimant failed to appear for his assignment was insufficient not only where it was based upon the Trainmaster asking a number of employees whether Claimant had reported but also because the sign-in sheet was not properly logged by employees on the property.

The Carrier counters that Claimant committed the infractions. When Trainmaster Gramelis became aware that there was no engineer to do a move of an Engine on the Main Line. He checked the Crew Management System and discovered the Claimant had accepted the job. Claimant was nowhere to be found and did not report his absence. Days later, Claimant then submitted a Paperless Time Ticket requesting to be paid, despite not coming to work. Because of the proof of Claimant’s infractions, the Carrier contends that the only issue for the Board is the imposed discipline.

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 prejudged. The record shows that Claimant was offered a full and fair hearing in both investigations.

There is substantial evidence in the record that Claimant accepted the assignment and did not show up. There is also substantial evidence in the record that Claimant submitted a pay request for that day not worked.


The Organization contends that the discipline was excessive in light Claimant's admission of a problem and availing himself to treatment under EAP. While this Board is certainly sympathetic to Claimant's situation and supports his desire to seek treatment, the Organization's argument must be measured against the facts of the underlying offenses. If the only matter before this Board were the failure to report, then the argument that Claimant was suffering from a condition requiring EAP assistance would perhaps ring truer. However, even if this Board were to find that the facts and circumstances surrounding the failure to report warranted discipline less than termination, there is the other matter. Claimant submitted a payment request for a day when he did not report to work. That is theft. The Carrier rightfully maintains that the Agreement does not require it to maintain employment for an individual proven to have engaged in acts of dishonesty.

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.

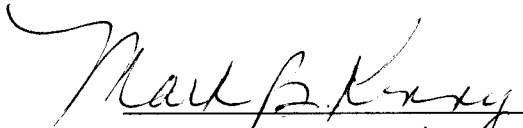
Award:

Claim is denied in Docket 494.

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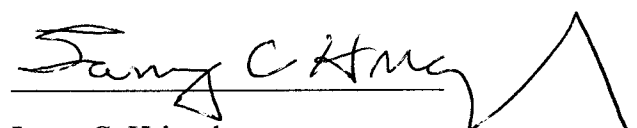


Brian Clauss
Chairman and Neutral Member



Mark B. Kenny
General Chairman
BLET
Organization Member

I dissent



Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

Dated this 11th day of JULY 2008