

**Special Board of Adjustment 928**

Award no. 496

**Parties to the Dispute:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**National Railroad Passenger Corporation (AMTRAK)**

**(Richard Piergrossi – Claimant)**

**Statement of Claim:**

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Richard Piergrossi (“Claimant”) for rescinding the imposed discipline of: ”termination of your employment with the National Railroad Passenger Corporation, as stated in the discipline letter dated February 23, 2007 2006, and 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.

A review of the record shows that the following facts are not in dispute. Claimant became involved in a continuing incident with a UTU representative regarding treatment of Claimant’s fiancée, a UTU member. Claimant mailed a number of letters to the UTU representative. Because of the nature of the letters that travelled through the United States Postal Service, the FBI and Amtrak Police investigated the matter. Following the FBI investigation, Claimant was sent a Notice of Formal Investigation dated January 17, 2007, that advised 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 two charges would be investigated.

The hearing was twice postponed and was held on February 16, 2007. The Carrier notified Claimant in a letter dated February 23, 2007, that the Charges were sustained. Claimant was assessed the discipline of termination from service.

The Organization argues that the charged violations were not properly investigated when the actions of only one party, Claimant, and not the other party, the UTU representative were investigated. Further, even if Claimant did commit the infractions, discharge was too severe given the facts surrounding the infractions, Claimant's years of service and that he was suffering from post-traumatic stress disorder from an incident in which a grandmother and two small children were killed at a grade crossing accident. Given the PTSD and Claimant's record, Claimant should not be terminated for such a violation and the discipline of dismissal is excessive.

The Carrier counters that Claimant committed the infractions and at the hearing he admitted to committing the infractions. Because of the Claimant's admission at the infraction, 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. Further, the Board finds that that the requirements of the applicable Rules are not ambiguous. Claimant was prohibited from the types of threats that were sent in this matter. The evidence established that Claimant sent the letters.. Accordingly, this Board finds that there was substantial evidence in the record to sustain the charges.

The Organization contends that the discipline was excessive in light of the offense, particularly where the Claimant's PTSD is considered as well as his lengthy service and Claimant's background. As stated above, the Board's role is limited to an appellate review. Under this limited review, we cannot disturb discipline unless it appears that the imposed discipline was arbitrary or capricious and constituted an abuse of the Carrier's discretion.

After a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: Claimant should be returned to work and restored to his prior position with seniority unimpaired. The Organization contends that the discipline was excessive in light of no damage, no injury and Claimant's record.

As stated above, the Board's role is limited to an appellate review and, under this limited review, we cannot disturb discipline unless it appears that the imposed discipline was arbitrary or capricious and constituted an abuse of the Carrier's discretion. In the instant matter, the termination was excessive and constituted an abuse of the Carrier's discretion when the facts, circumstances and Claimant's background are considered.

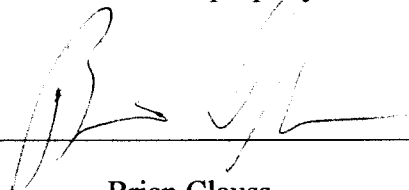
While the facts in the instant matter and the PTSD and Claimant's background offers mitigation, that mitigation is not an absolute – Claimant sent the letters. This Board does not need to reiterate the stupidity of Claimant's actions as Claimant's realization of his actions was readily apparent in the transcript. The FBI interview only underscores the point. It was also readily apparent that Claimant recognized the effect of the PTSD and sought EAP assistance as the matter unfolded.

However, this Board cannot ignore the issues surrounding Claimant's PTSD and his background. This is a serious offense that warrants discipline short of termination when the mitigation is considered. While termination is not warranted in the instant matter, neither is a make-whole remedy for this serious offense. Claimant committed the infraction and some discipline is warranted. Accordingly, Claimant is returned to work with no backpay and with remedial training.

The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger Engineers – including an appropriate examination related to the PTSD issue. There is no award of backpay as part of this award.

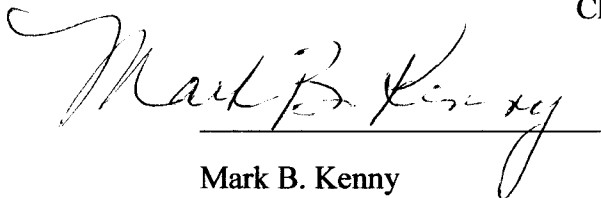
**Award:**

Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



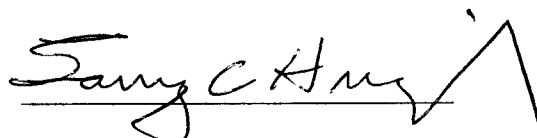
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Brian Clauss  
Chairman and Neutral Member



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Mark B. Kenny  
General Chairman  
BLET  
Organization Member



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Larry C. Hriczak  
Director, Labor Relations  
AMTRAK  
Carrier Member

*I DISSENT.*

Dated this 11<sup>th</sup> day of JULY 2008