

Special Board of Adjustment 928

Award no. 497

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(PHYLLIS WORTHY – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of BLE&T Local Chairman and Passenger Engineer Phyllis Worthy for rescinding the imposed discipline of: "termination of your employment with the National Railroad Passenger Corporation" as stated in the dismissal letter dated January 27, 2007, under the signature of Superintendent Michael Chandler. The Organization's claim further seeks: restoration to service with full seniority, vacation rights unimpaired, compensation for time lost, full credit toward vacation entitlement, full entitlement for health and welfare credits during the period held out of service, and clearing of Claimant's record as to any record 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 an Engineer and had been employed by the Carrier for over 19 years.

A review of the record shows that the following facts. The Carrier's Office of the Inspector General ("OIG") conducted an investigation into Carrier employees' use of an Alaska Airlines mileage promotion. That promotion was available to Carrier passengers. Coupons were distributed to the passengers and the completed coupons were placed in the ticket pouch with the accompanying revenue ticket. The OIG issued a report on December 4, 2006. That report named Claimant as an employee who had submitted coupons to Alaska Airlines seeking mileage credit. She sought mileage credit for trips

she had worked and had not purchased revenue tickets for those trips. On December 4, 2006, a Notice of Investigation charged Claimant with violating the Trust and Honesty Standards of the Carrier's Standards of Excellence.

The hearing was postponed, and a hearing was held on January 16, 2007. The Carrier notified Claimant in a letter dated January 23, 2007, that she was guilty of the presented charges and that she was dismissed.

The Organization argues that the Carrier committed procedural errors by not properly serving Claimant the Notice of Investigation and by not investigating the matter in a timely manner pursuant to Rule 21(d)1 that requires that an employee be notified of a formal investigation within 7 days from the date of the act or occurrence. As to the merits, the Organization maintains that although Claimant admitted that she submitted coupons for the mileage and accumulated mileage with the Alaska Airlines program, there was no economic value to the accumulated mileage because it was not at a level that she could redeem the mileage. According to the Organization, the Claimant would have to accumulate a lot more mileage before it would be of any value. Further, because she did not submit coupons after March 21, 2006, and did not redeem the mileage with Alaska Airlines, there was no improper intent. In addition, the evidence did not establish that the employees knew that the promotion was only available to full fair passengers.

The Carrier counters that Claimant was afforded a fair and impartial hearing that complied with the requirements of Due Process. The Carrier points to the decision in PLB 6478, Award 111 for the proposition that the OIG is independent of Carrier management and OIG knowledge garnered through an investigation cannot be imputed to the Carrier until an OIG report is submitted.

As to the merits of the instant matter, the Carrier points out that Claimant admitted that she submitted the mileage coupons on trips that she worked. According to the Carrier, Claimant's admission to the infraction forgoes any consideration of proof and the inquiry then turns to the propriety of the imposed discipline. However, even if the Board were to consider the evidence, it was clearly shown that Claimant was apprised of the requirements of the program when she enrolled in the Alaska Airlines mileage program. Moreover, given the nature of the offense and the facts of the instant matter, termination was appropriate and not an abuse of discretion.

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.

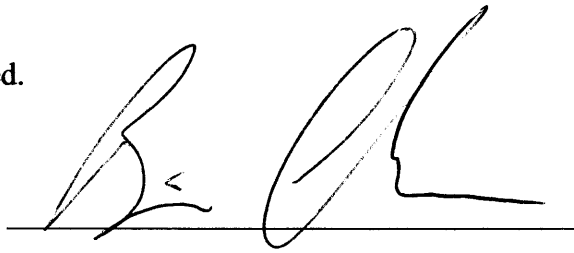
After a review of the record, the Board finds that there were no procedural defects which void the discipline. This Board has carefully reviewed the transcript and cannot find support from the record and supporting Organization arguments and citations that a single comment by the Claimant, that she had not seen the charges prior to the hearing, was sufficient to raise the issue of improper Notice. Absent more, the issue was not properly raised at the hearing. The Board also agrees with the reasoning of PLB 6478, Award 111, that the OIG's knowledge does not trigger the time limits. The OIG is an investigatory arm of the Carrier that operates independently of Carrier management. Carrier knowledge was triggered when the report was submitted. The Notice of Formal Investigation was sent on the day that the OIG report was submitted. Accordingly, there was no violation of Rule 21(d)1.

Further, the charges were proved. Claimant admitted to submitting the mileage promotion coupons and enrolling in the Alaska Airlines program. The enrollment information clearly discusses that the mileage accumulates based upon purchased tickets on certain routes. It is clear that the program was only for paying passengers who purchased tickets on those certain routes. Claimant traversed those routes while working, not while travelling as a paid passenger. The Carrier was partnering with Alaska Airlines as part of the promotion for Amtrak passengers. Claimant's actions were certainly dishonest. The Board rejects the Union's argument that Claimant's mileage was worthless because it had not yet risen to the level of redemption. The mileage clearly had some value that value increased as the mileage increased. The act is not honest and truthful up until the mileage is redeemable – only to become dishonest upon the accumulation of a certain value.

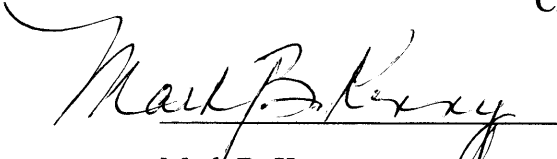
The inquiry before this Board next turns to the imposed discipline. The Carrier can rightfully demand truth and honest from its employees. Claimant displayed neither in the instant matter. There is nothing in the record that shows the Carrier to be acting unreasonably, arbitrarily or capriciously by dismissing the Claimant. The imposed discipline did not constitute an abuse of the Carrier's discretion.

Award:

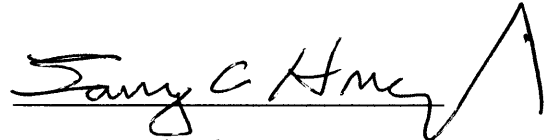
Claim is denied.



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 21ST day of JULY 2008