

Special Board of Adjustment 928

Award no. 502

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(L.R. Ward – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen (“Organization”) on behalf of Amtrak Passenger Engineer L.R. Ward (“Claimant”) for rescinding the imposed discipline of: ”Dismissed in All Capacities” as stated in the letter dated August 7, 2006 under the signature of General Superintendent J.D. Wall. Organization’s claim seeks 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 12 years with nearly 22 years of service with the Carrier.

A review of the record shows that the following facts are not in dispute. Claimant received a summons for Jury Duty at his local courthouse on June 12, 2006. The date for the Jury Duty was on June 23, 2006. On June 21, 2006, Claimant marked off his two-day job on June 22 and June 23 and told his manager that he was marking off due to Jury Duty. Claimant did not report to jury duty because he was not needed by the Court. Claimant submitted a paperless ticket for eight hours Jury Duty pay for June 22 and June 23, with the notation that it was “minus \$30.00.” A Road Foreman learned that Claimant did not report for jury duty. A supervisor inquired whether Claimant served on Jury Duty and Claimant admitted that he did not serve on Jury Duty.

Claimant was sent a Notice of Formal Investigation dated July 12, 2006, 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 postponed and was held on July 28, 2006. The Carrier notified Claimant in a letter dated August 7, 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 the transcript of the investigation is incomplete. As to the substantive matters, the Organization claims that no infraction occurred because the Claimant followed the orders of the Sheriff and the Court by making himself available for jury duty. Claimant notified a supervisor of the summons and the supervisor notified Payroll. That Grievant did not notify his supervisor and instead took a day off to help his mother move should not be held against him in this matter.

The Carrier counters that Claimant committed the infractions and 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. The transcript was shown to be accurate. Further, the Board finds that that the requirements of the applicable Rules are not ambiguous. Claimant is required to conduct himself in an honest manner when dealing with the Carrier and pursuant to the applicable rules and standards. Claimant submitted a paperless ticket for Jury Duty, despite not reporting at the court house. 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, Claimant’s belief that he was acting appropriately and Claimant’s background.

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 Claimant's background offers mitigation, that mitigation is not an absolute – Claimant submitted for Jury Duty when he did not perform the service. Although Claimant thought he might be entitled to the jury duty payment because he did not find out about the jury duty cancellation until the night prior to jury duty, this was incorrect. Rule 19 is clear in the requirements of payment for Jury Duty. Specifically, the employee must submit a statement from the court of the jury allowances and the dates that jury duty was performed. The Rule does not authorize pay for days that an employee is notified of possible jury duty, but does not serve. Claimant submitted for pay for jury duty although he did not go to jury duty.

Moreover, the request to deduct \$30.00 does not support Claimant's version of the events and ultimately supports that he was trying to get pay despite not being entitled.

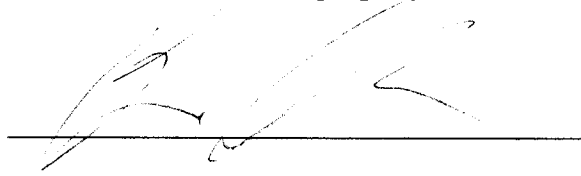
However, this Board cannot ignore the issues surrounding Claimant's discipline. While it is hard for this Board to imagine how Claimant could request to be paid for something that he did not do, the Organization's contention that Claimant believed he was entitled to be paid because he had to call off for a road assignment in order to be available for jury duty is understandable. Incorrect, but nonetheless understandable.

While this is a serious offense, 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.

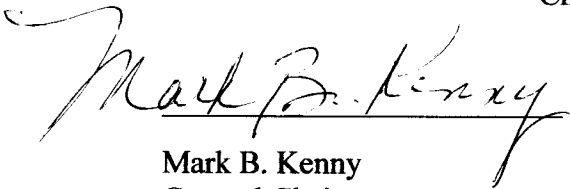
The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger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

Award:

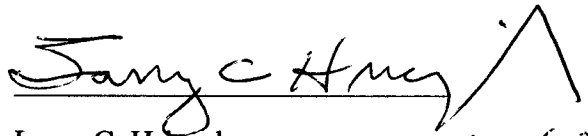
Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



Brian Clauss
Chairman and Neutral Member



Mark B. Kenny
General Chairman
BLET
Organization Member



Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

I DISSENT.

Dated this 21st day of JULY 2008