

P.L.B. No. 6312
Case No. 296
Award No. 296

**PUBLIC LAW BOARD
NO. 6312**

**Parties to
Dispute:**

**UNITED TRANSPORTATION UNION
AS THE REPRESENTATIVE OF
M.A. WESTFIELD**

Vs.

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)
SYSTEM DOCKET NO. OC-UTU-SD-2171D**

Statement of

Claim: Request the discipline of dismissal imposed upon M. Westfield be expunged from her record and that she be restored to service with seniority and vacation rights unimpaired and compensated for all time and expenses incurred inclusive of Health and Welfare premiums, Reduced Train Crew Allowance and Productivity Savings Sharing Allowance and credit for Railroad Retirement payments for each month lost in connection with the following:

SPECIFICATION: While working as an Assistant Conductor train 19 on September 13, 2007, it is alleged that approximately 10:08 AM after departing the Anniston, AL train station you displayed extreme negligence by placing the train into emergency, by using the emergency brake valve handle, to retrieve a watermelon that was being brought to you creating an unsafe environment for you, your co-workers, and the passengers while also causing an unnecessary delay to the train and passengers.

Charge I: Your alleged failure to comply with Amtrak's Service Standards Manual for Train Service and On-Board

**P.L.B. No. 6312
Case No. 296
Award No. 296**

Service Employees, Chapter 1, Standards of Excellence, Section, Professional and Personal Conduct, reading in part, 'On the Amtrak team there is no place for activities or behaviors that compromise the safety, satisfaction and well-being of our passengers, the public, or our fellow employees.'

Charge II: Your alleged failure to comply with Amtrak's Service Standards Manual for Train Service and On-Board Service Employees, Chapter 1, Standards of Excellence, Section, Attending to Duties, reading in part, 'As an Amtrak employee, you have an obligation to perform your duties properly and in accordance with the standard set for your particular job. Any activity or behavior that distracts or prevents you or others from attending to these duties is unacceptable.'

Charge III: You alleged failure to comply with Norfolk Southern Operating Rule Book Movement of Trains and Engines Section, Rule 82, reading in part, 'Conductors and Engineers are jointly responsible for unnecessary delay to trains.'

BACKGROUND FACTS

Appellant, M. A. Westfield, entered service as a Conductor with the Chicago Northwestern in 1980, accepted a severance package in 1990, and then entered service as an Assistant Conductor with the Carrier on November 4, 1991. Appellant was notified of the above Charges in a letter dated September 17, 2007. A trial was held on September 20, 2007,

**P.L.B. No. 6312
Case No. 296
Award No. 296**

and, at the conclusion of which, by Notice of Discipline dated October 1, 2007, Appellant was notified that she had been found guilty and was being assessed the discipline of termination "effective immediately." The Organization duly appealed Appellant's termination, which appeal was denied at every level of handling on the Property. The matter properly now stands before this Board for adjudication.

It is noted that the Board earlier issued an Interim Award that directed the reinstatement of Appellant to her former position "without any provision of back pay or benefits." The Board noted that it would then issue a decision providing its rationale.

Before the Board, the Organization maintains that the Carrier, via the Hearing Officer, made improper credibility assessments because the assessments he made lacked a valid foundation. While Carrier witnesses, according to the Organization, were deemed credible, witnesses produced by the Organization were deemed not to be credible. Further, prejudicial attitudes were be shown by the Carrier during the handling of this matter on the Property, the Organization argues, and the Appellant's full account of the incident, which establishes her innocence, was improperly rejected.

In reaching its conclusions on the Property, the Carrier, the Organization maintains, actually found that the only member of the operating crew that did not violate the Carrier's rule was Appellant since the other crew members refused to comply with Appellant's verbal

**P.L.B. No. 6312
Case No. 296
Award No. 296**

directive, which was legitimate, to stop the train. Nevertheless, the Organization posits, these members were not disciplined. According to the Organization, the record evidence is insufficient to support the termination decision.

The Carrier argues that the record contains substantial evidence supporting its decision to find Appellant guilty. That is to say, the Carrier maintains, Appellant placed the train into an emergency stop after it had started to depart solely for the purpose of obtaining a watermelon from a man on the station platform. Appellant's conduct, the Carrier claims, therefore compromised the safety and well being of the Carrier's passengers and was contrary to the Conductor's instructions.

The Carrier asserts that the testimony of Conductor Badger and the testimony of Engineers Marshall and Walker establish that, after the train had reached the speed of approximately 15 miles per hour, Appellant instructed them to stop. When the Conductor then overrode this instruction, the Carrier claims, Appellant placed the train in an emergency stop to receive a watermelon. Appellant's explanation that she placed the train into an emergency stop because she saw people waving at her and thought something was wrong, was contradicted, the Carrier claims, by the testimony of Conductor Badger. The testimony of Caretaker Jones and the two former Caretakers, the Carrier puts forth, lacked veracity.

As to penalty, the Carrier notes that Appellant has been assessed progressive

P.L.B. No. 6312
Case No. 296
Award No. 296

AWARD

The claim is sustained only to the extent that the termination has been found to be an inappropriate penalty, which penalty is modified to a period of unpaid suspension to end when Appellant was restored to service.

DATE: 9/20/08

[Signature]
THOMAS N. RINALDO, ESQ., NEUTRAL MEMBER

[Signature]
LARRY C. HRICZAK
CARRIER MEMBER 9-29-08
I DISSENT.

[Signature]
C. A. IANNONE
EMPLOYEE MEMBER