

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That Amtrak erred and violated the contractual rights of Lamon Harney, when they removed from service on October 2, 1978 as the results of investigation held on September 19, 1978.
- (2) That, therefore, Mr. Harney be returned to service with all rights, privileges and benefits restored.
- (3) That he be made whole for all health and welfare benefits, pension benefits, unemployment and sickness benefits and any other benefits he would have earned had he not been removed from service.
- (4) Further, that he be compensated for all lost time, including overtime and holiday pay plus 6% annual interest on all lost wages and that such lost time be counted as vacation qualifying time.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed as a Tractor Operator in Carrier's Redondo Junction, California, Maintenance Facility. On September 14, 1978, he was notified to appear for a formal investigation on September 19, 1978, on the following charge:

"Violation of Rule I, Rule J and Rule K of the National Railroad Passenger Corporation Rules of Conduct in that on September 8, 1978, at approximately 1:15 p.m. while on duty as a tractor operator at Redondo Junction you were given the job of washing the car body on Unit # 536 by Foreman S. K. Vaughn, to which you responded in a profane and vulgar manner. You were then ordered to the office; however, you refused to go."

Rules I, J and K of the National Railroad Passenger Corporation read:

- "I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will."
- "J. Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, horseplay, threatening or interfering with other employees or while on duty is prohibited."
- "K. Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

The investigation was conducted as scheduled. Claimant was in attendance and was represented. A copy of the transcript of the investigation has been made part of the record. The Board has carefully reviewed the transcript and finds that none of claimant's substantive procedural rights was violated. The investigation was conducted in a fair and impartial manner.

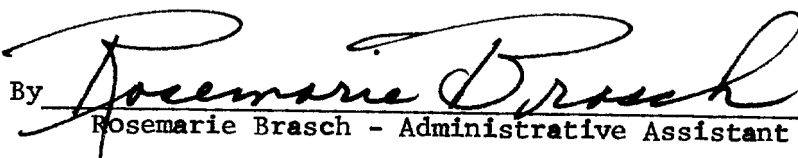
There was substantial evidence adduced at the investigation in support of the charge against claimant. His dismissal was justified and there is no proper basis for this Board to interfere with the Carrier's actions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of February, 1981.