Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7971
SECOND DIVISION Docket No. 7864
2-NRPC-CM-'79

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: ( System Federation No. 99, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
( National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That Carman Robert L. Horvath was improperly dismissed from the service of the National Railroad Passenger Corporation for a period beginning October 2, 1976, through November 30, 1976, a total of sixty (60) days.

2. That accordingly, the Carrier be ordered to afford Claimant, effective December 1, 1976, all his protection under Appendix C-2.

3. That accordingly, the National Railroad Passenger Corporation be ordered to compensate Carman Robert L. Horvath for all time lost, plus six percent (6%) interest on wages, reinstatement to service with seniority rights, vacation rights and all other benefits under Appendix C-2, after December 1, 1976, reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service.

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.

In a letter dated September 14, 1976, Claimant was notified by Carrier to appear at an investigatory hearing to be held September 23, 1976. Claimant was charged with allegedly having violated several rules of the Amtrak Rules of Conduct due to a failure to comply with both written and oral instructions issued by his supervisor. In a letter dated October 1, 1976, Claimant was notified by Carrier he had been found guilty as charged and accordingly had been given a sixty (60) day suspension from service, effective October 2, 1976 continuing through and including November 30, 1976.

The facts associated with the instant claim are as follows: On August 16, 1976, Claimant reported by telephone that he would be off work account of sickness. Claimant was also off work again on August 17, 1976 and the following two days, August 18, 1976 and August 19, 1976 were Claimant's rest days. On August 20, 1976, Claimant contacted his foreman by telephone regarding his marking-up for work. The foreman informed Claimant he could not mark-up for work until he had a doctor's excuse. As Claimant did not return to work for several days thereafter, the Carrier in a letter to Claimant dated August 24, 1976, apprised Claimant that according to Rule I of the Carmen's Agreement, he had until August 30, 1976 to either report to work or to notify the Carrier prior to that date. On August 30, 1976, Carrier contacted the Claimant by telephone and was instructed to bring in a doctor's release immediately. As Claimant failed to comply with this oral directive, Carrier in a letter to Claimant dated September 3, 1976 instructed him to report to the Missouri Pacific Hospital on September 9, 1976 at 8:00 AM for reexamination at the out-patient clinic. Claimant was informed further that failure to comply with these instructions would result in disciplinary procedures. As a result of Claimant's refusal to comply with the instructions contained in the letter dated September 3, 1976, Claimant was summoned to a formal investigation, subsequently adjudged guilty and given a sixty (60) day disciplinary suspension.

In a review of the record, this Board finds the evidence against the Claimant overwhelming. Claimant was, in all respects insubordinate when he failed to comply on three occasions with explicit instructions issued by his supervisor. We feel Claimant needs to be reminded that if he has cause to feel directives by his supervisor are in any way discriminatory, he has the right of redress through the contractual guarantee of the grievance procedure. As the Claimant had absolutely no right to simply refuse to comply with the instructions issued him nor to resort to self-help methods outside the collective bargaining agreement, we find the discipline imposed both appropriate and justified.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1979.