

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13221
Docket No. 13141
98-2-96-2-42**

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(International Brotherhood of Electrical Workers
(Local Union No. 134**
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

- "1. That the National Railroad Passenger Corporation violated the current Agreement, as amended, in particular Rule 23, when under date of June 21, 1995, Signal Maintainer Mike Fabian was unjustly terminated from service, and;**
- 2. That accordingly, the National Railroad Passenger Corporation expunge Signal Maintainer Fabian's record of the alleged charges and additionally, make Claimant whole by reinstating him with all rights unimpaired and reimburse Claimant for all lost wages and benefits."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant was terminated from the service of the Carrier on June 21, 1995 as a result of an Investigation held on June 7, 1995.

The transcript of the Investigation reveals that on May 17, 1995 Claimant was assigned to protect signal equipment while a contractor demolished the Polk Street Bridge in Chicago, Illinois. Claimant reported for duty in a van at 10:00 P.M. At approximately 1:45 A.M. the contractor's employees destroyed signal R66.

Both the contractor's Supervisor and a Flagman, a Carrier employee, testified that from the time the Claimant arrived at the job site until the time of the incident, the Claimant never left the van. The Supervisor further testified it took over five minutes to awaken the Claimant to report the accident.

The Organization takes the position that Claimant did not destroy the signal equipment, and that the Flagman did not prevent the accident. The fact that the contractor paid for repair of the equipment meant no financial loss. It also argues that the Carrier did not meet its burden to prove that the Claimant was guilty.

The Carrier takes the position that the Flagman was there to protect train movements, not the signal equipment. That was the purpose of the Claimant being assigned to the work site.

Numerous tribunals have held that the Hearing Officer is in the best position to determine witness credibility. In this case two witnesses testified that the Claimant never left the van and that it took over five minutes to awaken him. Claimant testified that when the Supervisor rapped on the van window he was reaching for a cigarette, he was not slumped over, and the reason it took so long to respond was because there was so much noise outside.

The record is clear that the Claimant received a fair and impartial Hearing, and that the Carrier proved the Claimant guilty. This is the sixth disciplinary action taken against the Claimant in the five years prior to the incident.

There is no basis to overturn the Carrier's action in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of February 1998.