

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13451

Docket No. 13358

99-2-98-2-45

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(System Council No. 15

(National Conference of Firemen & Oilers (SEIU)

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Mr. C. Baker, Motor Equipment Operator, Seattle, Washington was unfairly dismissed from service of the National Railroad Passenger Corporation (Amtrak) effective December 9, 1997.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to make Mr. Baker whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest, with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreement during the time held out of service; and that the mark be removed from his record.

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.

The Claimant was advised on November 11, 1997 that he was being charged with violation of Amtrak's safety rules. He was specifically charged with having an altercation with another employee, of striking another employee in the head with a blunt instrument and causing him bodily harm, and of pointing a handgun at and threatening harm to another employee. On December 4, 1997 an investigation was held. Thereafter the Claimant was advised that he had been found guilty as charged and he was discharged from service of the Carrier. Absent settlement of the claim on property this case has been docketed before this Board for final adjudication.

A review of the record shows that an employee working second shift was in the processing of displacing another employee working the third shift under provisions of the labor Agreement. The third shift employee is the Claimant to this case. The second shift employee's position was being abolished.

When the Claimant to this case allegedly heard about the pending displacement he confronted his fellow employee, who was working the second shift, with the observation that the latter was "... messing things up ..." for him. The Claimant had come to work early in order to confront the second shift employee before the latter clocked out. The second shift employee responded that he had sufficient seniority for the displacement. He had five years' seniority. The Claimant had 7 months' seniority. Thereafter ensued an altercation wherein the Claimant, according to testimony at the investigation, displayed a handgun, shouted at his fellow employee who was to do the displacement that he would "kill" him, and then hit this fellow employee on the head with the handgun. The injured employee later called 911 and the Seattle police responded. The employee was taken to a hospital emergency room where he was treated and received stitches. The Claimant was arrested and incarcerated by Seattle police.

The Rules which the Claimant is charged with violating state the following, in pertinent part.

Safety

Firearms, explosives, knives or other weapons must not be in your possession unless authorized.

Attending to Duties

Amtrak's success depends on using all available resources in the most efficient and productive way possible. As an Amtrak Employee and, therefore, the company's most important resource, you have an obligation to perform your duties properly and in accordance with the standards set for your particular job. This requires that you remain alert to your duties at all times. Any activities or behaviors that distracts or prevents you or others from attending to duties is unacceptable.

Professional and Personal Conduct

On the Amtrak team there is no place for activities or behaviors that compromise the safety, satisfaction and well-being of our customers, the public or fellow employees. Therefore, boisterous conduct such as fighting, rudeness, assault, intimidation, horseplay and using vulgar language is unacceptable.

A review of the transcript of the Investigation, and associated exhibits including the Report filed by the Seattle Police Department on November 10, 1997 warrants the conclusion that the Claimant was in violation of the Rules cited in the foregoing. The Organization points to some discrepancy of detail when the Claimant's fellow employee, who was assaulted and received the stitches, described the incident. Such details in themselves are insufficient to undermine the credibility of the record as a whole in this case. What is clear is that an employee was assaulted, he did end up in the hospital, he did so after talking with the Claimant, and there is no other person whose existence was even alleged who could have hurt the second shift employee except the Claimant. The gun was never produced. But there was sufficient time for the Claimant to have disposed of it.

Rulings by this Board are framed on basis of the standard of substantial evidence. This evidence has been defined as ". . . such relevant evidence as a reasonable mind might accept as adequate to support a conclusion . . ." (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). See also Second Division Awards 3956, 4962; Fourth Division 2572; PLB 5712 Award 4 inter alia. The Board will conclude here that the Carrier as moving party has sufficiently fulfilled the requirements of that standard in the instant case and the Board is constrained to rule accordingly.

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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 25th day of August 1999.