

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13662

Docket No. 13587

01-2-00-2-79

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

- "1. That the National Railroad Passenger Corporation (hereinafter referred to as Carrier), violated Rule 23 of the current controlling Agreement between the Sheet Metal Workers' International Association and the National Railroad Passenger Corporation, effective October 1, 1977, subsequently revised on December 22, 1992, when they unjustly terminated Sheet Metal Worker Jean-Pierre H. Leyx (hereinafter referred to as Claimant) for allegedly being in violation of Carrier's Standards of Excellence.
2. That the Carrier compensate Claimant for all lost wages, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and all other rights that are a condition of employment, and that the entire investigation digest be expunged from Claimant's personal 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.

Prior to his termination, the Claimant worked as a Sheet Metal Worker on third shift from 11:59 P.M. to 7:59 A.M. On March 20, 2000, Passenger Train No. 5 arrived at Oakland between 7:00 and 8:00 P.M., and was scheduled to turn and depart the next morning, March 21, 2000. Passenger Train No. 5 arrived with two MAP 21 forms and a defect report indicating that the train's dining car had no hot water and that a sleeping car had a bad odor and an air leak. There is no dispute that the Claimant was properly assigned to repair these defects.

The Claimant testified that he placed his hand under the faucet in the dining car and felt it to be hot. On the MAP 21 he wrote: "Temperature well - Hot." He also stated that he inspected the sleeping car and found no air leak. On the MAP 21 he wrote, "sanitized toilet, checked no leak, deodorized lower toilets." The Claimant signed both MAP 21 forms, indicating that the reported defects had been corrected, and left at the conclusion of his shift.

Fifteen minutes later, at approximately 8:15 A.M., the onboard chief and the sleeping car attendant for the train approached Mechanical Supervisor M. Bordenave, and advised him that there was no hot water in the dining car and that a bad odor and audible air leak were evident in the sleeping car. Supervisor Bordenave walked out to the train and verified their report. He then assigned first shift Sheet Metal Worker M. Raeside to correct the defects. Raeside subsequently reported that he corrected the problems by performing the necessary repairs. Due to the additional time spent making these corrections, the train was more than one hour late leaving Oakland.

The Claimant was charged with failing to repair the defects noted, failing to notify supervision that the repairs had not been made, and signing off on the MAP 21 forms attesting to having repaired the defects when in fact they had not been repaired, in violation of Amtrak's Standards of Excellence. Following an Investigation on April 12, 2000, the Claimant was dismissed from service.

The Organization contends at the outset that the Claimant was denied a fair and impartial Investigation by the manner in which the Hearing Officer conducted the Investigation. In the Organization's view, the Hearing Officer acted not as a fact finder but as an adversary, initiating inquiries and attempting to substantiate the charges

against the Claimant, while at the same time disallowing the introduction of material evidence proffered by the Organization.

After careful consideration of the record in its entirety, the Board rejects this threshold argument. Our review leaves no doubt that the Hearing was conducted fairly and consistent with due process. We can discern no irregularities in the manner in which the Hearing was conducted nor do we perceive that the Hearing Officer's conduct was anything less than impartial. The Organization specifically requested that the Hearing Officer not entertain evidence on anything other than the charges at hand. That is what the Hearing Officer did. Concluding as we do that the Claimant and his representative were afforded full opportunity to conduct their defense to the charges, we find the Organization's due process objection is without merit.

Turning our attention to the misconduct alleged, the Board finds that the testimony at the Investigation provides substantial evidence that the charges directed against the Claimant were indeed proven. On the date in question, the Claimant signed the MAP 21 forms indicating that three defects had been repaired. The weight of the credible evidence points directly to the conclusion that the defects had not been fixed. Although the Claimant offered various exculpatory explanations at the Hearing for his actions, we find that they were properly rejected by the Hearing Officer as lacking in credulity. Clearly, the Claimant not only failed to make the necessary repairs, but he also signed off on the MAP 21 forms attesting to having made the repairs, thereby misrepresenting the condition of the train. As a result of the Claimant's misconduct, the train was delayed for over an hour so that repairs which should have been made overnight during the Claimant's shift could be performed.

These are serious derelictions of duty to a Carrier which has obligations to the traveling public. Equally important, the Claimant's misconduct does not stand as an isolated event. His work record, which includes six suspensions, three actual and three deferred, and six counseling sessions since 1993, suggests that the Claimant is unwilling or unable to comport himself in accordance with the expectations of the workplace. Concluding as we do that the Carrier's determination to discharge was not unreasonable or an abuse of its discretion, the claim must be denied.

AWARD

Claim denied.

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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 11th day of December, 2001.