

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) violated the current agreement when Electrician J. Fiorentino was denied a fair and impartial investigation on May 27, 1980.
2. That under the current agreement the National Railroad Passenger Corporation (Amtrak) has unjustly dismissed Electrician J. Fiorentino from service effective June 9, 1980.
3. That accordingly, the National Railroad Passenger Corporation (Amtrak) should be ordered to restore Electrician J. Fiorentino to service with seniority unimpaired; to restore to the aforesaid employee all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate for each day he has been improperly held from service, and all benefits due him under the group hospital and life insurance policies for the above mentioned period; to restore all railroad retirement benefits due him for the including unemployment and sickness benefits due him for the above described period, and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; to restore all other benefits that would normally accrue to him had he been working in the above described period in order to make him whole.

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 waived right of appearance at hearing thereon.

Claimant was dismissed from the service of the Carrier on June 6, 1980 following a formal investigation held on May 27, 1980. Claimant had been charged with violation of Rule 11(b) of the Agreement ("The workweek shall be 40 hours ...") and Rule K of the Carrier ("Employees must report for duty at the designated time and place..."). Prior to his dismissal, Claimant was employed as an electrician in the Motor Shop since February 24, 1976.

The Claimant raises three issues for our deliberation. First, the Claimant was not afforded a fair and impartial hearing. Second, the evidence does not support the charges. Third, the discipline assessed was not commensurate with the offense.

Claimant believes that he was not afforded a fair and impartial hearing insofar as the Carrier did not call the appropriate witnesses, that additional charges were raised at the hearing which were not specified in the Notice of Investigation, and that the hearing officer had prejudiced the Claimant's case in statements made during the hearing and for his failure to call the appropriate witnesses. During the course of the hearing, Claimant acknowledged the fact that he had received proper notice and that he was entitled to have his representative present, which he did. During the course of the hearing, all witnesses were subject to cross-examination by the Claimant and his representative. Furthermore, Claimant was afforded the right to present any and all witnesses on his behalf. Secondly, we agree with the Claimant's argument that his employment record cannot be used to determine guilt or innocence of the charges preferred. Their use in an investigation is limited to the measure of discipline, and only then if the charges are determined to be proven. Lastly, there was no objection raised by the Claimant or his representative at the hearing that the hearing was unfair or partial. For these reasons, we cannot concur with the Claimant's contention on this issue.

With respect to the issue that the evidence on the record does not support the finding, we also must disagree with the contention of the Claimant. It is well settled that this Board is not a trier-of-fact. Absent evidence of arbitrary, capricious or discriminatory behavior, we will not upset the findings of fact as determined by the hearing officer. As a reviewing Board, we are not in a position to be present at the hearing; we are not able to observe the testimony and demeanor of the witnesses; we are not in a position to establish their credibility. We have consistently held that we will not upset the finding-of-fact in cases such as this where there appears, on the record, credible and sufficient evidence in which to support the charges and ultimate determination of fact. We find nothing in this record to overturn the findings as originally determined.

Lastly, the Claimant contends that the assessment of discipline was not commensurate with the offense. Even when considering the family problems of the Claimant, we find that his prior twenty day suspension just one month previous to the instant discipline, supports the penalty imposed. Even though we may have reached a different conclusion as to the severity, we are bound by past decisions of this Board to uphold the measure of discipline if we find it to be reasonable and supported by the record. In this case, we must reach this conclusion.

Therefore, for the reasons cited above, we deny the claim.

A W A R D

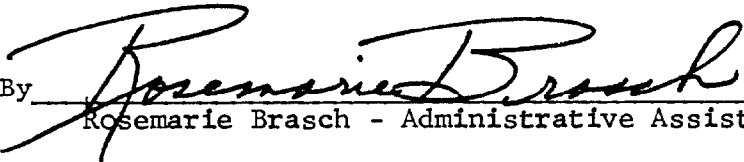
Claim denied.

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Award No. 9472
Docket No. 9501
2-NRPC-EW-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of May, 1983.