

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

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

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) unjustly dismissed Electrician Tyrone Rogers from service effective September 10, 1982.
2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Tyrone Rogers to service with seniority unimpaired and with 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 of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge 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 employe or employes involved in this dispute are respectively carrier and employes 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 charged with violation of Carrier's Rules of Conduct "I", "J", "K" and "L" stemming from a charge of absence from his assigned duties, and his allegedly insubordinate, belligerent and threatening behavior when questioned by his Supervisor. The Organization argues that Claimant's dismissal from service was improper due to denial of a fair and impartial hearing, failure by the hearing officer to allow Claimant to have representation, improper use of Claimant's prior record, and failure of Carrier to meet its burden of proof. The Carrier contends Claimant received a fair and impartial hearing, his guilt of the charges was clearly established, and the discipline assessed was proper in light of the offenses and Claimant's record.

A complete review of the record does not support the Organization's contentions. Claimant was allowed Union representation throughout the proceeding. While it is true that Claimant's legal counsel who was present during a portion of the hearing was not allowed to actively participate, direct and cross-examination was permitted of all witnesses by Claimant and his representative. The Organization's representative was allotted full opportunity to actively participate in all phases of the proceedings. Inquiry into Claimant's prior record was handled in a proper manner, and there is no evidence that it was in any way prejudicial to the determination of guilt upon the aforementioned charges.

In addition, the admission of an oral statement by Claimant's physician was proper. The statement was both probative and relevant to the Claimant's physical condition, and constituted an admission by Claimant as he authorized a statement on his illness by his personal physician.

The testimony contained in the record established by sufficient, credible evidence that Claimant was guilty of the charges. Carrier's Foreman testified that Claimant was rude, used profane language and threatened physical harm when questioned regarding his absence from duty for almost two (2) hours. Two other witnesses corroborated the charging officer's testimony regarding Claimant's profane and threatening behavior. One of Claimant's witnesses did testify that there was a verbal altercation of sufficient proportions to necessitate placement of his person between Claimant and the charging Foreman.

Claimant defends his actions on the basis that he was in diabetic shock at the time of the incident. In addition, this medical condition allegedly prevented Claimant from any clear recall of the events in question. The Board finds the record contains credible testimony that the charging officer was aware of Claimant's diabetic condition, and that Claimant's medical problems were real. It is not unreasonable to assume based on the medical evidence, that after a diabetic attack such as appears to have occurred to Claimant prior to the altercation, a loss of memory for a period of thirty (30) minutes may be experienced. The record shows Claimant's alleged illness occurred in the period from 3:00 - 7:00 p.m., and the incident took place at 10:50 p.m. Further, Claimant has no medical history of violence as the result of a diabetic attack. The defense of diabetes to the instant charges must fail.


This Board considers, however, that under all the circumstances of this claim, the discipline has served its purpose. Therefore, Claimant shall be reinstated to service with seniority unimpaired, but without back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.