

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation (AMTRAK) violated Rule 24 of the scheduled Agreement dated September 1, 1977, but not limited thereto, when it arbitrarily and capriciously assessed Machinist C. Riley thirty (30) days suspension following investigation held on April 25, 1986, for falsification of personal injury report alleged.

2. That accordingly, a decision should be reversed, Machinist C. Riley be made whole for all losses and his record cleared of any reference to the charge.

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.

On March 30, 1986, a bolt was thrown into the office of a Foreman shattering a window. On April 1, 1986, the Claimant filled out an injury report alleging that a piece of glass had injured his eye while he was in the office on March 30, 1986.

On April 22, 1986, the Claimant was notified to report for a formal Investigation for:

"Your responsibility for your alleged failure to comply with that portion of the National Railroad Passenger Corporation Rule of Conduct 'F-3' which states: 'Conduct involving dishonesty, immorality, or indecency is

prohibited. Employees must conduct themselves on and off the job so as not to subject Amtrak to criticism or loss of good will.' In that, on April 1, 1986, you falsified a personal injury report."

Following the Investigation held on May 7, 1986, the Claimant was notified by letter dated May 16, 1986, that he was being assessed a thirty (30) day suspension.

The Organization claims that on March 30, 1986, the Claimant was injured while in the Supervisor's office when the window was shattered; that the Claimant was denied medical treatment by the Carrier and sought independent treatment for his eye which included the removal of a sliver of glass. Consequently, the Claimant filed an injury report on April 1, 1986.

The Organization argues that the Claimant was denied a fair Hearing by virtue of the fact that the Hearing Officer denied the Claimant and the Organization the right to call certain witnesses. The Organization also alleges violation of fundamental rights of due process and Rule 24(a).

The Carrier contends the testimony of numerous witnesses establishes that the Claimant was not in the office when the window was broken. Further, the Carrier charges the Claimant with trying to obtain an injury settlement from Amtrak with no medical evidence of injury to his eye or proof of treatment by another medical facility. The Carrier alleges that the Claimant failed to fulfill his obligation to report a job related injury immediately. This failure, combined with the other facts noted above, is indicia of the Claimant's alleged falsification of records.

The Board has considered both the procedural and substantive issues raised before it by the Organization. The Board will continue adhering to the well-established principal that it will not disturb a conflict in testimony that has been resolved by the Hearing Officer. The Hearing Officer's resolution based upon the abundance of testimony establishes that the Claimant was not in the office at the time that the window was shattered. A Laborer's Local Chairman also testified that the Claimant was not in the office. Further, the Claimant was unable to establish that he received independent medical treatment.

The Board also finds that the Hearing Officer's actions in denying the Claimant the opportunity to recall witnesses was not improper under the circumstances and that all other procedural aspects of the Hearing were well within the parameters of agreement due process.

It is the opinion of this Board that the Claimant's actions amounted to attempted stealing and, as such, the discipline administered to him was lenient to say the least.

Form 1
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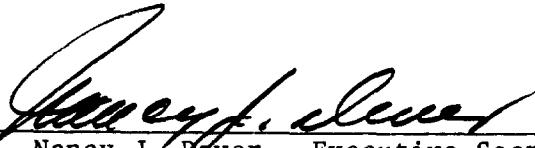
Award No. 11771
Docket No. 11556
89-2-88-2-25

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1989.