

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13220

Docket No. 13103

98-2-96-2-24

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

(International Brotherhood of Electrical Workers

(System Council No. 14

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

- "1. That under the current Agreement, Electrician A.J. Morgan was unjustly treated when he was suspended from service on February 4, 1995 pending investigation for alleged violation of Rule "L" and (F-2) of the National Railroad Passenger Corporation's Rules of Conduct and terminated from service on March 3, 1995.**
- 2. That accordingly, the National Railroad Passenger Corporation be ordered to rescind the suspension and dismissal and compensate Electrician A.J. Morgan for all lost wages due to the suspension and dismissal with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent (6%) per annum."**

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.

Claimant was dismissed from the service of the Carrier on March 3, 1995 as a result of an Investigation held on February 17, 1995.

Claimant was found to have violated Carrier Rules L and F2, which read:

"L. Obeying Instructions

Employees must obey instructions, directions, and orders from AMTRAK supervisory personnel and officers except when confronted by a clear and immediate danger to themselves, property, or the public. Insubordinate conduct will not be tolerated.

2. Employees will not assault, threaten, harass, intimidate, fight, or participate in any activity which could cause bodily injury to other employees or members of the public while on duty or on AMTRAK property or using AMTRAK equipment. Employees while on or off duty, will not disrupt or interfere with other employees in the performance of their duties."

A review of the transcript of the Investigation shows that the Claimant was working the third shift on February 3, 1995, from 11:59 P.M. until 7:59 A.M. on February 4. When given the work assignment for the night, the Claimant questioned why other Electricians were not given as much to do. At approximately 6:30 A.M. the Foreman asked Claimant if the work was finished. Claimant responded by cursing and threatening the Foreman.

Later at 7:15 A.M. the Claimant and the Foreman had another confrontation in the break room at which time the Claimant threatened to "get" the Foreman outside the gate. The Foreman telephoned the General Foreman after each incident. After the second call, the General Foreman instructed the Foreman to tell the Claimant to wait until the General Foreman got to work.

When the General Foreman arrived, he and the Claimant had a verbal exchange, and when the Claimant was instructed to go into the General Foreman's office, he refused.

The Organization filed this claim alleging that the Claimant was unjustly treated and dismissal was an abuse of managerial discretion.

While there was conflicting testimony at the Investigation, the Carrier argues it proved the charges and that dismissal is warranted, particularly in light of the fact that this discipline is the third in four years for the same type of offense.

The Hearing Officer is in the best position to determine the validity of the testimony. There was no evidence in the record indicating that the Carrier had any reason to trump up the charges against the Claimant. While the Board has elected not to set forth the language used in the threats against the Foreman, suffice to say that the record was full of vulgarities and Claimant's language was obscene.

There is no basis for the Board to overturn the actions of the Carrier.

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 26th day of February 1998.