

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13400

Docket No. 13328

99-2-98-2-14

The Second Division consisted of the regular members and in addition Referee Martin H. Malin 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 controlling Agreement, Electrician E. Alonso was unjustly treated when he was suspended from service for a period of five (5) days following investigation for alleged violation of Amtrak’s ‘STANDARD OF EXCELLENCE,’ Sections - ‘Discrimination’ and ‘Attending to Duties.’
2. Accordingly, the National Railroad Passenger Corporation/Amtrak be ordered to:
 - (a) Rescind the five (5) day suspension and compensate Electrician E. Alonso for all lost wages due to the five (5) day suspension, 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, and;
 - (b) Remove all references to the alleged violation of Amtrak’s ‘STANDARD OF EXCELLENCE’ from Electrician E. Alonso’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.

On September 16, 1996, Claimant was notified to appear for an Investigation on September 25, 1996, concerning an incident which occurred on August 20, 1996. The notice charged Claimant with verbally harassing a Coach Cleaner and with delaying the Coach Cleaner in the performance of his duties. The Hearing was held as scheduled. On September 27, 1996, Claimant was advised that the Hearing Officer had found that the charges were proven and that Claimant had been assessed a five day suspension. During handling on the property, Carrier determined that the charge of delaying the Coach Cleaner's work had not been proven. Nevertheless, Carrier did not disturb the five day suspension.

The Organization argues that Carrier failed to prove the charges. The Organization maintains that testimony by the Coach Cleaner was not credible. Furthermore, the Organization contends that Carrier erred by not disturbing the penalty even after conceding that the charge of delaying the Coach Cleaner had not been proven.

Carrier contends that it proved the charge of harassment by substantial evidence. Carrier urges that the Board defer to the Hearing Officer's credibility determinations. Carrier further argues that the harassment charge is sufficient to support the five day suspension. Carrier also objects the Organization's claim for interest on backpay.

The Board has reviewed the record carefully. We find that Carrier proved the charge of harassment by substantial evidence. The Coach Cleaner testified that Claimant intimidated him, saying, "You can't hide from me," and "I can give you a bad time anytime I want." The Coach Cleaner also testified that Claimant kicked the door to the electrical locker housing the outlet into which the Coach Cleaner's vacuum cleaner had been plugged.

Although Claimant denied making the statements or kicking the door, as an appellate body we generally defer to credibility determinations made on the property. In the instant case, the Foreman corroborated the Coach Cleaner's testimony by testifying that the door was closed with the vacuum still plugged in and by testifying that the Coach Cleaner reported the incident to him right after it happened and appeared to be frightened and upset. Under these circumstances, we see no reason to disturb the decision on the property to credit the Coach Cleaner's testimony over the Claimant's.

During the appeals on the property, Carrier conceded that the second charge had not been proven. Our review of the record reveals that the five day suspension was based on the Hearing Officer's findings of guilt on both charges. Because one of those two charges was not proven, we will order that the discipline be reduced to a two day suspension and that Claimant be compensated for lost wages in excess of a two day suspension. However, we observe that the Agreement does not provide for an award of interest on lost wages. Therefore, the claim for interest will be denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.