

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13839

Docket No. 13726

05-2-04-2-7

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Sheet Metal Workers International Association

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

- “1. The Carrier violated the current and controlling agreement when it improperly dismissed Sheet Metal Worker John B. Miles for violation of its Standard of Excellence, specifically its sections of the policy referred to as the “Professional and Personal Conduct” and its “Attending to Duties” sections. The Organization firmly believes that discipline assessed is extremely harsh and unjustified.
2. That accordingly, the Carrier be required to reinstate M. Miles to active service and compensate him for all lost wages and benefits to which he would have been entitled had the dismissal not occurred as outlined in the original first level of appeal.”

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.

The incident leading to this dispute occurred on September 3, 2002. Claimant was given three instructions from Foreman Jones. He was told to clean a ceiling drip pan to prevent a ceiling leak; help find the location of a clogged toilet pipe; and to leave the toilet flush system off so that the pipes would not become irreparable. By date of September 5, 2005, the Claimant was not only charged with allegedly failing to comply with these three instructions, but also with becoming argumentative and loud when requested to trouble shoot the clogged toilet. Following a September 12, 2002 Hearing, the Carrier issued its decision that the Claimant was guilty as charged and was dismissed from the Carrier's service.

The Organization strongly objects to the disciplinary decision. On merits, the Organization argues that the Claimant had discussed with Foreman Jones what had to be performed on the toilet before the Claimant went to lunch. As for the drip pans, the Foreman admitted he instructed the Claimant to leave the car before the repairs were performed. As for the instruction to leave the flush system off; while it is true that the Claimant did turn the system on, and this was wrong, it was "minor" and not sufficient reason for dismissal. In fact, due to the Claimant's justified attempt to take his meal period and the Foreman's initiated and provocative tone, the dismissal was unjustified and excessive.

A full review of the transcript and record of this case clearly supports the Carrier's actions. The Carrier considered the Claimant's behavior to be insubordination, demonstrating an argumentative and uncooperative response. In testimony from Foreman Jones when asked about the Claimant's assisting with the clogged toilet, Mr. Jones stated:

"He got loud and says: I'm going to lunch. It's between the fourth and fifth hour. If I don't take it now, I know what happens; I lose it completely. . . I'm going to lunch. I said let's troubleshoot this. Nope. Going to lunch."

With respect to the issue of cleaning the ceiling drip pan, there is no dispute that the Claimant was asked to pull the hatch down and clean the secondary drip pan to avoid a leak. In testimony, Foreman Jones stated that when he asked about this work, the Claimant "pulled out a screwdriver, says: It's obvious if I have a too small screwdriver, I can't do that job." The job was not performed.

Most important is the record and testimony related to the clogged toilet pipe in the Viewliner sleeping car. Foreman Jones testified that this was a very serious issue that he had been working on for some time. It was a clogged toilet pipe that put the car out of service if it could not be repaired. The record is absolutely clear that the Claimant was explicitly told to keep the system off while the Foreman went to obtain a tool to repair the problem. As Forman Jones testified:

"I explained . . . leave the system off because . . . if you turn it on all it's gonna do is suck whatever we've got right . . . into the top of the tank: we'll end up cutting the car. . ."

There is no dispute that the Claimant knew what he had been told and did not follow instructions. The Claimant testified that he had been told not to turn the pump back on and also, that he turned the pump back on.

The failure to follow instructions on the clogged pipe in the Viewliner sleeping car led ultimately to the car being taken out of service and the sleeping car passengers given other accommodations. This had serious repercussions and none of the outcomes would have occurred had the Claimant followed the Foreman's instructions.

The Carrier has provided sufficient probative evidence to prove the Claimant guilty. A full review of the Claimant's testimony does not demonstrate any mitigating circumstances for his actions. Neither the Foreman's exasperation, nor the issue of a meal period is a legitimate defense for outright refusal to follow instructions.

Having concluded that the Carrier has proven guilt, the only remaining question is the quantum of discipline. The Claimant's actions are a form of insubordination and any variant can result in dismissal. In this instance, the

Claimant has had a disciplinary record which indicates no improvement. In a relatively short time, the Claimant has waived a hearing and accepted 3 days' suspension for profanity toward his Supervisor; has been assessed a 5 days' suspension for belligerence toward his Supervisor; and has been both suspended and dismissed for neglecting his duties and subsequently reinstated without back pay.

Clearly, the Carrier has disciplined the Claimant without significant improvement. This is not an action which fits into what the Organization calls "minor" and nor are the Claimant's actions before this Board unrelated to his past discipline. Accordingly, with sufficient evidence supporting the Carrier's finding of guilt and no basis to mitigate or find the discipline to be anything but progressive and appropriate, the Board will not interfere with the Carrier's determination. The Board can not find the discipline excessive under the circumstances of this dispute. The claim must be denied.

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 1st day of April 2005.