

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13867  
Docket No. 13741  
05-2-04-2-18

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

(Stanley E. Addison

**PARTIES TO DISPUTE:** (

(National Railroad Passenger Corporation  
(Amtrak

**STATEMENT OF CLAIM:**

- “1. Amtrak counseling and guidance policy along with the collective bargaining agreement not adhered to, resulting in wrongful termination.
2. Failure in duty of fair representation
3. A remedy would be reinstatement, reimbursement of lost wages along with benefits and seniority unimpaired and charges cleared.”

**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.

By date of April 29, 2004, the Carrier issued a formal notice specifying eight charges related to sexual harassment. There was one postponement before the hearing was held on May 14, 2004. While the Claimant and his representative were initially present, they left after protesting the hearing. The Carrier held the hearing *in absentia*. Subsequently, the Carrier notified the Claimant by letter dated May 20, 2004 that he had been found guilty and was dismissed from the Carrier's service.

The Board has reviewed the appeal process. On June 18, 2004, the Claimant appealed his discharge to the Charging Officer and followed with an appeal to the proper officer on July 29, 2004. The Carrier responded on August 5, 2004 rejecting the Claimant's appeal. The Claimant thereafter filed a Notice of Intent with the National Railroad Adjustment Board on August 5, 2004. There is no dispute that this was the full appeal process.

After the claim was appealed by the Claimant and rejected, nothing further was handled on the property. Rule 23 which governs the on-property procedures states that any denial, if appealed "shall be made to the Director of Labor Relations." There was no such appeal and Rule 23, paragraph (d) was not complied with in this instance. A Notice of Intent submitted to the National Railroad Adjustment Board of the National Mediation Board is improper unless all of the on-property appeals of Rule 23 have occurred.

Section 3, First (i) of the Railway Labor Act states that disputes "... shall be handled in the usual manner up to and including the Chief Operating Officer of the Carrier designated to handle such disputes." This Board is not permitted and has absolutely no jurisdiction over any dispute that was not handled in the proper manner on property. As there was no appeal to the Director of Labor Relations, as required, the claim is barred from consideration.

Even if, *arguendo*, the claim was not barred, which it most certainly is, a full review of the transcript and evidence finds that the Claimant was guilty as charged on all eight specifications. There is no merit whatsoever to this case. Nevertheless, the claim is barred and as such, the Board must dismiss it rather than deny it.

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**AWARD**

**Claim dismissed.**

**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 7th day of September 2005.**