

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23445
Docket Number W-23367

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Welder Foreman Thomas Mays was without just and sufficient cause, arbitrary, capricious and on the basis of unproven charges (System File NEC-MW-SD-67D).

(2) Welder Foreman Thomas Mays shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant Thomas Mays, a welder foreman with almost four years of service was given notice on May 29, 1979 of an investigation on June 8, 1979 in connection with:

"Violation of NRPC-Amtrak Rules of Conduct 'I' under General Rules, in that Mr. Mays reported on the NEC-MW3 eight hours straight time for himself and other members of his gang, when in fact he performed no compensable services after 1:30 AM, May 24, 1979. Mr. Mays' tour of duty on the above date was from 9:00 PM, May 23, 1979 to 5:30 AM, May 24, 1979. Rule 'I' states as follows:

'Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.'

After the investigation Claimant was given written notice of dismissal on June 19, 1979.

An examination of the record by the Board establishes that Claimant reported a shift of work for himself and the welding gang although both he and the members of that gang did not work a full shift in violation of Rule "I". There was substantial evidence to sustain Carrier's decision to discipline Claimant. In view of Claimant's prior record, including just coming off a tea day suspension for a similar infraction, dismissal is reasonable.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the **Carrier** and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

That this Division of the **Adjustment** Board has **jurisdiction** over the dispute involved herein; and

That the Agreement **was** not **violated**.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.