

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25018
Docket Number MW-24873

Eckehard Muessiy, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(National Railroad Passenger Corporation (Amtrak))

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

(1) The dismissal of Welder M. J. Hayes for alleged 'Violation of Rule 'K' of Amtrak Rules of Conduct, which reads in part, 'Employees must report for duty at the designated time and place . . . attend to their duties during the hours prescribed . . . ' was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement. (System Docket 237D)

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant herein was charged with violation of two of Carrier's rules, both relating to absences from duty, without proper authority, occurring on a number of days during 1980. Following two trials held without the presence of the Claimant, the Carrier found him guilty of the charges and he was terminated from the service.

The Claimant, through the Organization, has noted numerous errors, both of a procedural and substantive nature, that are a part of the lengthy record before this Board. The procedural contentions are essentially founded on the basic assertion that the Claimant was not properly notified and did not receive a fair and impartial trial. On substantive grounds, the Organization argues that the Claimant was clearly absent from work for good and sufficient reasons related to an injury and had so notified the proper Carrier authorities.

The Carrier essentially argues that the Claimant continually postponed the trials until such time that it was only reasonable to conclude that he **was** attempting to avoid the proceedings. With respect to the trials, held in absentia, it holds that substantial evidence of probative value in support of the charges was adduced at a fair and impartial trial. It contends that this evidence supports its finding of guilt of the charges.

The Board has thoroughly reviewed the many complicated issues presented by this dispute to insure that the Claimant's rights were not violated. While the Organization's arguments are not without merit, after conducting a careful examination, we do not find that Carrier acted in a prejudicial manner. Moreover, the Board finds sufficient evidence to support the Carrier's finding with respect to the charges.

Nevertheless, in view of all of the circumstances and facts set forth in the record, we find permanent dismissal to be an excessive discipline. Accordingly, having thus found, the Claimant will be restored to service with seniority rights unimpaired, but without any compensation for time lost while out of service.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.