

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25028
Docket Number MW-25093

Eckehard Muessig, 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 **Trackman** D. C. Hopkins for alleged violation of Rule "I" was without just **cause and** in violation of the Agreement (System Docket 022).

(2) The claim 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 was notified, and agreed to attend, **an** investigation scheduled for December 18, 1981, on a charge relating to the Carrier's contention that the Claimant was improperly taking Amtrak items off the property.

After the Claimant failed to appear for the investigative hearing, he was sent a certified return receipt letter in which it was stated that the hearing had been rescheduled for January 6, 1982. When the Claimant failed to appear for the investigation, **it was conducted in absentia**, over the objection of the Organization. Subsequent to the investigation, the **employee** was notified that he had been found guilty of a violation of Rule I **and** dismissed from the service.

The Organization essentially argues that the Claimant had not received proper notice of the time and date of the trial and, thus, he was fatally deprived of his due process rights, as provided by the Controlling Agreement.

Certainly, the Organization's arguments are understandable and not without reasonableness. However, given the facts and circumstances of the record before us, we find the Carrier decision to hold the trial in absentia was not violative of the Claimant's rights.

With respect to the merits of this dispute, the records reveal that Carrier's findings are based upon substantial evidence and, accordingly, there is no valid basis for disturbing the penalty assessed. The claim is denied.

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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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

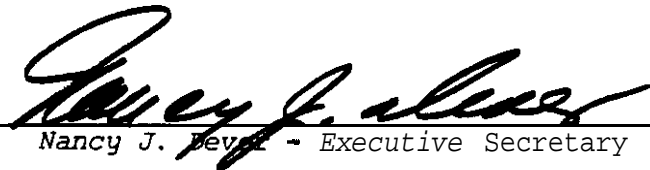
That the Agreement was not violated

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devos - Executive Secretary

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