

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26122
Docket Number MW-26345

Philip Harris, 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 F. K. Johnson for alleged 'Violation of Amtrak Rule of Conduct "I" ... in that on March 20, 1984, ... you refused a direct order of Project Engineer J. Lepman', was arbitrary, capricious, unwarranted and on the basis of a trial that was not fair or impartial (System File NEC-BMWE-SD-875D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed in all capacities on April 6, 1984 for reason of insubordination. A Management official three times gave him an order, and twice spoke to Claimant's Foreman about the refusal to comply, all to no avail. A witness corroborated the interchange.

The Organization raises timeliness, discrimination and credibility issues. Concerning the first of these, the Carrier offered to postpone a Hearing to allow for more preparation time, but the Claimant declined the opportunity. Regarding the second issue, the facts of another case allegedly handled in a disparate manner are not part of the record here, so we are not in a position to review the findings. As to credibility, it is the Hearing Officer who is able to render such judgments. We must rely on him since the witnesses are not testifying before us in a de novo proceeding.

The Board finds no reason to alter the discipline that was imposed. This conclusion is supported by the Claimant's unenviable personnel record. On three previous occasions he was suspended. One of these was originally a dismissal that was reduced on a leniency basis in relation to a travel pass abuse. The other two were a ten and a fifteen-day suspension for insubordination. Progressive discipline had been utilized; unfortunately it did not yield the sought-after goal of correcting unacceptable behavior.

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

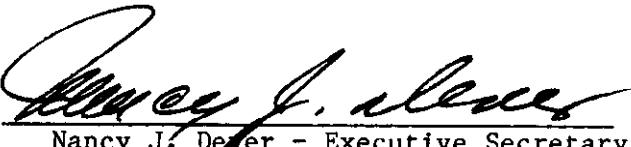
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

