

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Ernest E. Hicks
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"On the reappeal of Ernest E. Hicks, on grounds of the unjust action taken against him, that lead to the deflamation of his charater and termination of his job with Amtrk, here follows: The charges in question are: 1). participated in the theft of Amtrak passenger baggage and arranging for disposal of stolen items for personal gain." (sic)

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On November 11, 1988, Carrier notified the Claimant of an Investigation on charges that he had allegedly participated in theft of passenger baggage and participated in disposal of stolen property. In addition, he was charged with allegedly selling and using controlled substances while on duty.

The Claimant was present at the December 19, 1988, Investigation which was recessed. Thereafter, a certified letter forwarded to the Claimant (establishing a Hearing resumption date of January 10, 1989) was received and signed for.

The Claimant was not present at the January 10, 1989, resumption; had made no prior request for a postponement, nor did he state any prior objection to the Hearing date. The Hearing proceeded "in absentia."

The Carrier has argued that this Board may not now entertain this appeal since the Claimant did not submit his "notice of intent" within the prescribed time limitations. Without regard to the numerous Awards of this Board which have demanded a strict compliance with the requirement of a timely submission, we will dispose of this dispute on its merits.

To be sure, there was some hearsay evidence submitted into the record. However, there was also direct, first-hand evidence presented. The record, taken as a whole, contains a sufficient showing to warrant approval of the Carrier's action.

The Organization did seek a postponement at the January 10, 1989, Hearing when it became apparent that the Claimant was not present. We do not feel that there was an abuse of discretion when that motion was denied. Even if there was some compelling reason for the Claimant to refuse to testify at that time, it was surely his responsibility to notify the Carrier prior to the Hearing, or at least attend on the day of the Hearing to state his reason. The Claimant failed to do so; nor did he notify his representative of his intention not to attend.

Under the circumstances of this record, when an Employee is aware of charges against him, and is aware of the Hearing date, and then fails to attend, he surely does so at his own peril. He may not merely disregard the Investigation and then seek a "de novo" Hearing before this tribunal, which was the request in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.