

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29811  
Docket No. CL-30672  
93-3-92-3-569

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

(Transportation Communications International Union)  
PARTIES TO DISPUTE: (National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10845) that:

Amtrak File No. TCU-D-3629

1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule #24 of the Agreement, when by notice of August 2, 1991, it assessed discipline of 'termination from service' against Claimant, pursuant to an investigation held on July 25, 1991.
2. Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what he could have earned, including but not limited to daily wages, holiday pay and overtime, had discipline not been assessed.
3. Carrier shall now reimburse Claimant for any amounts paid by him for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier."

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 employe 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 waived right of appearance at hearing thereon.

Claimant was regularly assigned as a Red Cap at the Los Angeles passenger station.

On June 25, 1991, the Claimant was instructed to report at 9:00 A.M., July 2, 1991, for a formal Investigation to determine whether he...

"...on June 8, 1991 allegedly charged passenger Pamela Weir \$15.00 for excess baggage and never remitted the monies to Amtrak, thereby depriving Amtrak of revenue."

Subsequently, the Investigation was postponed and rescheduled for July 25, 1991.

After carefully examining the transcript of the Investigation, we conclude the Claimant as well as another Carrier witness confirmed that a passenger on the train to Seattle had excess baggage. It was also confirmed that the passenger paid the Claimant \$15.00 and that money was not remitted to the Carrier. The question is whether the Claimant received a tip or collected the fee for excess baggage. There is no question the passenger had excess baggage, and that the Claimant knew the cost for the excess baggage was \$15.00. The Board feels that this was more than mere coincidence. The passenger thought she was paying for the excess baggage, but the money was not remitted to the Carrier.

While the passenger was not present at the Investigation, a written statement by her was made part of the transcript. The Organization objected that it was not allowed to cross examine the passenger. Even though it has been well established by this Board, as well as other tribunals, that statements from non-employees are acceptable as evidence, the basic facts of her statement are not in conflict.

With regard to the degree of discipline assessed, the record reveals that Claimant was dismissed effective August 2, 1991. However, by letter dated May 8, 1992, the Director Labor Relations advised the General Chairman that the Carrier was reinstating Claimant to service. Under date of May 18, 1992, the General Chairman informed the Carrier that such action was a unilateral action on its part, and that the Claim for backpay would be

progressed to arbitration, thus preserving the Organization's right to progress the Claim to this Board.

It is the conclusion of the Board that the charges against the Claimant were proven and no further modification of the discipline assessed is warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.