

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31795
Docket No. CL-32005
96-3-94-3-363**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11055) that:

- 1. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when, by notice of April 30, 1992, it assessed discipline of ten working days suspension, to be served after the first level of appeal, against Reservation Sales Agent Ms. Rosa Perez.**
- 2. The Carrier shall, if she is ever required to serve the suspension, be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay, had discipline not been assessed.**
- 3. The Carrier shall now expunge the charges and discipline from Claimant's record."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant was charged with being rude to a customer and placing her on hold unnecessarily, while the customer was making an inquiry concerning a ticketing matter. Following an Investigation on these charges, at which a copy of the customer's letter of complaint was made a part of the record, and the customer testified by telephone, the Claimant was disciplined with a ten day suspension. The Organization appealed the discipline on a variety of contentions. It argues that the Claimant was denied a fair and impartial Investigation when the Claimant was not afforded the opportunity to face her accuser. Second, it argues that there was no basis for the Hearing Officer to conclude that the Claimant's testimony was less credible than that of her accuser. And, third, the evidence does not support a conclusion that the Claimant was indeed rude to the customer.

The Carrier argues that the Claimant's guilt was clearly established. Further, it was not improper to take testimony over the telephone. Further, the discipline assessed was appropriate under the circumstances. The Carrier's singular basis for the assessment of discipline in this matter was the letter written by the customer and her testimony at the Claimant's Hearing, taken by telephone. The Carrier, it is apparent, blindly accepted the customer's perception of being treated rudely and being placed on hold unnecessarily, without consideration of the Claimant's side of the story. It seems that instead of balancing the evidence fairly the scales were tipped against the Claimant. In Award 4 of Special Board of Adjustment No. 1068 Referee Vaughn discussed the perspective to be used in weighing evidence connected with customer complaints. Here it was noted:

"The Carrier properly requires of its RSA's that they satisfy customers and, to maximize the probability that customers will be satisfied, that RSA's treat customers in a courteous and professional manner, without rudeness. Failure to meet those standards properly subjects RSA's to discipline. However, the premise that 'the customer is always right' and should be courteously treated, even when the customer is not right, does not mean that the RSA is to be disciplined whenever there is a dissatisfied customer. Misconduct must be proven by substantial evidence, on the record as a whole, and cannot be established by generalities and innuendo. Assessment of whether an RSA's responses in a particular situation were inappropriate to the extent of supporting discipline must include analysis of whether the customer's assessment of treatment and dissatisfaction was reasonable under the circumstances.

This is not to say that difficult customers justify rudeness; it is to say that the entire situation must be examined and the customer's dissatisfaction not used as the sole measure of RSA conduct."

In the application of the above to this case, it should be noted that the Board has serious problems with the testimony of the customer. Her complaint was that the Claimant would not let her ask a question when the Claimant was explaining to her the procedures for purchasing a ticket, and that the Claimant put her on hold with "music blaring in her ear." The Claimant testified that she was merely explaining procedures to a customer that the Claimant perceived as experiencing difficulties in understanding what was being said, and when the customer shouted at her to "shut up" she put her on hold to let the matter cool down.

Review of the customer's response at the Hearing, to questions asked by the Claimant's Representative, indicates to the Board that this customer is a person difficult to deal with, and suggests that this was the situation in her dealings with the Claimant. The Claimant's Representative opened his inquiry with four simple questions, which were answered, and then observed:

"Ma'am, I've also been a reservation agent."

To which the customer retorted:

"Well, I happen to be the customer, here, and I think that I should have been treated much more courteously. And, I also feel that I should have been allowed to ask my question. I do not feel that I should be upset by you, right now, over something that I had no control over."

The Claimant's Representative immediately apologized by stating:

"I'm sorry if I'm upsetting you, but we're trying to get to the facts."

To which the customer responded:

"You're badgering me is what you're doing, and I don't appreciate it. And, I've explained to you, I've explained to the Hearing Officer, I've also written a letter, exactly what was the problem. The problem is, she would not allow me to ask a question. Then she got very abusive verbally."

From our review of the transcript the Board is unable to find a basis, even a hint of a basis, to support the customer's notion that the Claimant's Representative was badgering her in his questioning. Instead, what seems to be the case is that the customer became annoyed with the questions that were being asked. The Board's assessment of her becoming annoyed is supported by the customer's response a few moments later that she felt that one of the questions was irrelevant. This, as well as other statements in the transcript, which need not be visited in great detail here, cast doubts on the customer's credibility.

Furthermore, the customer told the Claimant to shut up when the Claimant was explaining the ticket policy, and the customer acknowledged that she was rude. In this record there is no doubt that the customer most certainly contributed to the situation and it is obvious that her assessment of the Claimant's treatment to her was not reasonable, and may very well be overstated. The Board, therefore, concludes that the assessment of the Hearing Officer that the Claimant's conduct was inappropriate to the extent of supporting discipline is not supported by the record. The discipline assessed will be reversed.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 1996.