

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31872
Docket No. CL-32008
97-3-94-3-372

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 Organization (GL-11065) that:

- 1. Carrier violated the provisions of Rule 24 when on May 13, 1993, it held Claimant (Patrick Woods) from service pending a disciplinary investigation.**
- 2. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of May 28, 1993, it assessed discipline of 'Termination from Service' against Claimant, pursuant to an investigation held on May 21, 1993.**
- 3. 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 he not been held from service and had discipline not been assessed.**
- 4. Carrier shall now expunge the charges and discipline from Claimant's record.**
- 5. 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 the 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 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.

Following an investigation on a charge that Claimant "attempted to extract information of a private and personal nature" from an Amtrak customer, discipline of dismissal was imposed. The Organization appealed the dismissal on a variety of grounds. It argued that Claimant was denied a fair and impartial investigation when he was not afforded the opportunity to face his accuser - the testimony of the principle and only witness to the conversation was taken by telephone. Second, the Organization argued that there is no basis for the Hearing Officer to conclude that Claimant's testimony was less credible than that of the accuser. And third, the Organization contended that the evidence does not support the charges placed against Claimant.

The Carrier argued that Claimant's guilt was clearly established. Further, it was not improper to take testimony of a customer over the telephone, and dismissal was appropriate in the circumstances, noting that Claimant's short service does not warrant mitigation.

The Board concludes, on this record, that the Carrier has not established sufficient cause to discipline the Claimant. We carefully studied the testimony taken by telephone of the complaining witness and conclude that her statements, considered in the worst light for the Claimant, simply do not warrant dismissal. Clearly the Hearing Officer was without any basis to credit the testimony of the complaining witness under the circumstances in which it was offered. The discipline will not be allowed to stand.

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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 4th day of March 1997.