

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32890
Docket No. CL-34243
98-3-97-3-655**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-11839) that:

- 1. Carrier acted arbitrarily, capriciously and in an unjust manner, in violation of Rule 24 of the current Amtrak/T.C.U Agreement, when by letter dated April 29, 1996, it assessed the discipline of termination to Claimant, Mr. T. H. Smith, as the result of a formal investigation held on April 17, 1996.**
- 2. Carrier shall at once compensate Claimant an amount equal to what he could have earned, commencing with the date he was first withheld from service, until such time he is reinstated with seniority rights unimpaired.**
- 3. Carrier shall expunge all record of the discipline from Claimant's work file.**
- 4. Carrier shall now be required to compensate Claimant for any amounts paid by him for medical, surgical or dental expenses for himself or his dependents 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.

The Board has thoroughly reviewed the record in this case. In sum, the Board finds that the Carrier has not carried its burden of persuasion, which is a particularly heavy one in the case of dismissal. The record contains a direct conflict of testimony between Claimant and Carrier's primary witness against him, with no supporting testimony for either's position. In such a situation, where the contradictory evidence can truly be said to result in a "net wash," the party with the burden of persuasion - in this case the Carrier - must lose. Accordingly, the instant claim is sustained.

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 21st day of October 1998.