

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32958
Docket No. CL-33581
98-3-96-3-946**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11535) that:

- (1) Carrier violated the provisions of Rule 24 when, on March 19, 1995, it held Claimant from service pending a disciplinary hearing.**
- (2) Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of April 6, 1995, it assessed discipline of 'Termination from Service' against Claimant, pursuant to an investigation held on March 28, 1995.**
- (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 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 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.

Claimant was held out of service pending Investigation of three charges. The first two dealt with theft. The third charge alleged a verbal assault and intimidation of two employees by suggesting that they would "die" if Claimant's behavior was reported and he lost his job as a result. Following Investigation held March 28, 1995, Claimant was exonerated of the theft charges, but was found guilty of the threat charge. Carrier imposed the penalty of termination due to the nature of the misconduct and in view of Claimant's disciplinary record, which reflected six prior instances of other misconduct in some six years.

The Organization raised a number of procedural objections to the Carrier's discipline and also attacked the sufficiency of the evidence in support of the Carrier's findings. In addition, the Organization contended that the penalty of termination was extreme, arbitrary and unjust.

After careful review of the record, we find that the Organization's procedural objections lack merit. Although the Rules under which Claimant was charged were revised, reorganized and retitled, they remained virtually identical and did not change in substance from the time of Claimant's alleged misconduct to the time he was charged. The transcript of the Investigation does not establish that Carrier violated the time limits for investigating the third charge. Similarly, the transcript does not reveal that Claimant was denied a fair and impartial Investigation. Finally, the nature of the alleged misconduct fits within the parameters of Rule 24 that permit holding an employee out of service pending Investigation.

The record contains substantial evidence from the two threatened employees in support of the third charge. The transcript also contains sufficient evidence in support of the Hearing Officer's finding that their testimony was credible. Given the requisite evidentiary support, we may not disturb the Carrier's determination as to Claimant's guilt.

The Organization also challenges the harshness of the penalty. It notes that Claimant was an 11 year employee at the time of his termination.

Violence has become a very serious concern in contemporary workplace settings. Given Carrier's overall responsibility to provide a safe workplace environment, we are loathe to substitute our judgment for that of Carrier in the absence of a clear showing that it abused its discretion. In light of the nature of the proven misconduct as well as Claimant's past record, we do not find that Carrier's decision was arbitrary, capricious or unwarranted.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of November 1998.