

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35198
Docket No. CL-35699
00-3-99-3-542**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-12415) that:

- 1. Amtrak acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when it rendered its decision to discipline the Claimant following a formal investigation.**
- 2. Amtrak shall now expunge the discipline from Claimant’s record; compensate Claimant for all lost time, if any; and reinstate all seniority rights, benefit rights, and other employment privileges that may have been taken away as a result of this wrongful discipline.”**

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.

In a letter dated January 20, 1998, the Carrier notified Claimant Mary Isbell, a Reservation Sales Agent, she had been charged with two counts of violating Amtrak's Standards of Excellence for an alleged incident of creating a fictitious passenger reservation in the Carrier's reservation system on December 18, 1997. In a Carrier letter dated February 27, 1998, following a Hearing held on February 19, 1998, the Claimant was found guilty of both charges and was assessed the discipline of ten days actual suspension and a final warning for being found guilty of violating two parts of Amtrak's Standards of Excellence - "Trust and Honesty," and "Attending to Duties." The Organization's appeal to the Carrier's highest designated officer was denied in a letter dated March 30, 1999.

The Carrier alleges that while Supervisor Peggy Beverage was conducting an electronic and audio observation of the Claimant on the morning of December 18, 1997, she observed the Claimant making a fictitious passenger reservation. Beverage testified she observed the alleged fictitious reservation while using an electronic monitoring system that enables her terminal to mirror the activities on the Claimant's terminal. At the time of the incident Beverage testified she observed on her terminal a reservation for custom class seats and two deluxe rooms being entered into the Carrier reservation system with the Claimant's ID, and the terminal ID of the terminal where the Claimant was working that day, but that she did not hear the Claimant having a conversation with a passenger while the reservation in question was allegedly being entered by the Claimant. Beverage also testified she confronted the Claimant about the reservation in question after she had taken a couple more calls that same morning. During a meeting Beverage held in her office with the Claimant she asked her to cancel the reservation, which she did. The Carrier asserts that a report from the Carrier's mainframe computer dated January 16, 1998, makes clear that the Claimant had made the reservation in question that Supervisor Beverage testified she observed on her computer terminal while mirroring the Claimant.

The Organization contends at the outset that a fatal procedural error occurred in the handling of this case. The Organization asserts that, although Carrier Supervisor Beverage had knowledge of the incident on December 18, 1997, for which the Claimant was assessed the two charges, the charges against the Claimant were made in a letter dated January 20, 1998, which is well over the 30-day limit allowed in Rule 24 of the Agreement. Rule 24 reads in pertinent part as follows:

“RULE 24

DISCIPLINE-INVESTIGATION-APPEAL

- (B) An employee and his representative shall be given written notice in advance of the investigation, such notice to set forth the specific charge or charges against him. No charge shall be made that involves any offense of which the company has had actual knowledge thirty (30) calendar days or more . . . ”

After careful review of the record, it is clear that the Carrier violated the time limits in its late charging of the Claimant. Accordingly, the Board has no choice but to sustain the claim but makes no comment regarding the merits of the matter at issue. The violation of the time limits is sufficient to warrant sustaining this particular claim solely on the basis of the procedural violation.

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 20th day of December, 2000.