

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35751
Docket No. CL-36335
01-3-00-3-552**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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-12633) that:

- 1. The Carrier acted arbitrarily, capriciously, and in an unjust manner, in violation of Rule 24 of the current Amtrak/TCU Agreement, when by letter dated May 17, 1999 it assessed the discipline of "time withheld from service" to Claimant, Mr. Larry Guidry, as a result of a formal investigation held on May 11, 1999.**
- 2. The Carrier shall at once compensate the Claimant an amount equal to what he could have earned during the period of suspension.**
- 3. The Carrier shall expunge all record of the discipline from the Claimant's work file."**

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.

On March 29, 1999, the Carrier notified the Claimant to appear for a formal Investigation into the charges that on March 24, 1999, at approximately 7:12 A.M., the Claimant was advised by Service Manager Beuben R. Bravo that a complaint had been received that the Claimant had a weapon on Carrier property while attending to his duties as a Ticket Agent in Houston, Texas. The Carrier notified the Claimant that he was in possible violation of the Safety Standard in Amtrak's Standards of Excellence.

After one postponement, the Hearing took place on May 11, 1999. On May 17, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was further informed that his time withheld from service was to be considered a disciplinary suspension. The Carrier also notified the Claimant that he was to contact the EAP counselor within ten days of returning to service and follow any and all recommendations.

The Organization filed a claim on behalf of the Claimant, arguing that the Carrier be required to compensate the Claimant an amount equal to what he could have earned during the period of suspension and that all record of the discipline be expunged from the Claimant's record. The Carrier denied the claim.

The Carrier argues that how supervision was made aware of the Claimant's weapon is not the issue. The Carrier contends that it was aware of a potential violation of Carrier policy and acted accordingly. The Carrier argues that although the Claimant was state licensed and not violating any state laws, he did in fact violate the Carrier's weapon policies. The Carrier maintains that it has a policy which states that any kind of weapon, whether loaded or unloaded, will not be permitted on Carrier property. The Carrier claims that although the gun was in the Claimant's car, it was readily accessible and could be loaded very quickly and cause harm to anyone. The Carrier further points out that the Carrier can withhold an employee from service pending Investigation if allowing that employee to remain in service could be detrimental. The Carrier also claims that the Claimant's long service and the circumstances of his case were also taken into account in determining the relatively light assessment of discipline for what might otherwise be handled as a major offense. The Carrier contends that the Claimant's suspension ended May 17, 1999, and he was not cleared to return to work until July 20, 1999. In addition, the Carrier contends that the time from May 17, 1999, until his return to work on July 27, 1999, the Claimant was under the care of his doctor and medically unable to work. The Carrier maintains that there is no information indicating that the Claimant was held from service beyond the date of the Hearing Officer's decision of May 17, 1999, and that his discipline amounted to 54 days, not 71.

The Organization claims that Carrier Officials did not receive a complaint that brought about the cause to investigate the actions of the Claimant and it must be assumed that a disgruntled employee notified supervision about the Claimant's firearm. The Organization argues that the Claimant is licensed in the state of Texas to carry a firearm. The Organization maintains that the handgun was not in the Claimant's possession as defined by law, but was in the trunk of his car, unloaded, with a plug which prevented firing, and in two separate weapon cases. The Organization argues that the Claimant's actions presented no threat to anyone and that the matter was strictly the Claimant forgetting the gun was even in his trunk. The Organization also argues that the Claimant's automobile was not on Carrier property. The Organization points out that the Claimant has more than 27 years of service and has a good service record. The Organization maintains that the Carrier wrongfully withheld the Claimant from service both before and after the formal Investigation in violation of Rule 24. The Organization claims that the discipline was both severe and without merit, amounting to a 71-day suspension. The Organization points out that the Claimant's suspension began on March 24, 1999, and ended on July 26, 1999, when the Claimant finished the required EAP classes.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant violated Carrier Rules by bringing a weapon onto Carrier property on Wednesday, March 24, 1999. The Carrier properly found the Claimant guilty, even though the firearm was locked in the trunk of the Claimant's vehicle. The Carrier then issued the discipline of "all time served will serve as a disciplinary suspension." The Claimant was ordered to contact the EAP counselor within ten days. However, then the Carrier determined that the Claimant was unable to work from May 17, 1999, until his eventual return to work on July 27, 1999, because he was under the care of his doctor and medically unable to work.

The Board finds that there is insufficient proof that the Claimant was under the care of his physician or any other physician for any sickness or ailment. The Carrier has not provided any medical reasons for withholding the Claimant from service after the decision of the Hearing Officer. Moreover, it is clear that the Claimant complied with every instruction that he was issued by the Carrier during that period of time.

The Claimant was removed from service on March 24, 1999. The decision of the Hearing Officer was issued on May 17, 1999. That decision states clearly that "all time

withheld from service will serve as a disciplinary suspension.” The Board finds that based on that decision, the time of the disciplinary suspension terminated on May 17, 1999. We also find that the Carrier had no legitimate basis to withhold the Claimant from service after that date.

Moreover, a letter from the Claimant’s doctor indicated that he was in excellent health during that same period of time. Since the Carrier has no legitimate basis to justify the additional time off, the Board must find that the Claimant is entitled to backpay from May 18, 1999, until his eventual return to work on July 27, 1999.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of October, 2001.