

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36194
Docket No. CL-36837
02-3-01-3-506

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12762) that:

1. Carrier acted arbitrarily, capriciously and in an unjust manner, in violation of Rule 24 of the current Amtrak/TCU Agreement, when by letter dated August 24, 2000, it assessed the discipline of “Termination” to Mr. Brett McDaniel as the result of a formal investigation held on August 17, 2000.
2. Carrier shall at once compensate Claimant an amount equal to what he could have earned commencing with the first day he was removed from service until such time as he is reinstated with seniority rights unimpaired.
3. Carrier shall expunge all record of the discipline from 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.

At the time of the incident that gave rise to this case Claimant B. C. McDaniel was employed by the Carrier as a Customer Service employee in Greensboro, North Carolina. On August 3, 2000, he was sent a Notice of Formal Investigation, reading as follows:

**"August 3, 2000
Mr. Bret C. McDaniels
321 Washboard Rd.
Thomasville N.C. 27360**

Dear Mr. McDaniels:

You are hereby directed to appear for a formal investigation as indicated below:

**DATE: August 8, 2000
TIME: 8:00am
PLACE: Amtrak Station Greensboro N.C.**

The purpose of this investigation is to develop the facts and determine your responsibility, if any, in connection with the following rule violations:

Charge 1: Amtrak's Standards Of Excellence: "Trust And Honesty" which reads in part. . . . When you become part of our company, we place our trust in you. In turn, you must conduct yourself honestly and in a way that reflects credit upon Amtrak.

Specification: It is alleged that on February 7, 2000 you brought discredit upon Amtrak and Service Manager E. J. Quigley by creating and posting derogatory comments on the internet using your personal AOL account.

You may produce any witness you so desire and you may be accompanied by a representative provided for in your current governing agreement without expense to the National Railroad Passenger Corporation.

All requests for postponements of this investigation must be handled through the Division Hearing Officer at 202-906-2383.

Sincerely,

**C.W. Rose
Charging Officer"**

A Hearing in the matter was held on August 17, 2000. Both parties had ample opportunity to examine and cross examine witnesses at the Hearing. The Claimant was granted all due process and procedural rights guaranteed him by the Agreement. A transcript of the Hearing was provided to all parties, as required. As a result of the Investigation, the Claimant was found guilty as charged and dismissed from the Carrier's service.

A review of the record of this case reveals that the Claimant is a short term employee with a poor record. His record includes a ten-day suspension in December 1997, a five-day actual and a five-day suspension held in abeyance for one year, and a 30-day suspension, effective August 21, 1998. On the written material delivered to the Claimant on the occasion of both suspensions, there were words of warning that future incidents of Rule violations or inappropriate behavior could result in dismissal. The 30-day suspension letter dated September 1, 1998 was labeled a final warning.

The incident that resulted in the Claimant's dismissal resulted from the Claimant putting on the Internet, under a computer screen with the name of AMTRAKSUCKS, profile of his Supervisor. In the profile, he made insulting comments about his Supervisor and his family. His Supervisor received an instant message on his internet connection displaying the AMTRAKSUCKS symbol and his profile.

Much discussion took place in this record concerning procedural issues, such as time limits, and why the Claimant was suspended prior to the Investigation, as well as the Carrier's failure to demonstrate that what the Claimant did was a detriment to the Carrier or to the Claimant's Supervisor. The Board considered these issues and concludes that standing alone, or considered together, they cannot offset the seriousness of the Claimant's actions. When the Claimant's total record is considered, the Board concludes that the Carrier is not required to continue such an employee on its payroll.

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 24th day of September 2002.