

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36416
Docket No. CL-37101
03-3-01-3-679

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-12787) that:

- (a) The Carrier violated the Amtrak-Northeast Corridor Clerks' Rules Agreement particularly Article VI-Work Rules, paragraph 1-Discipline; when by letter dated December 2, 1999 the Carrier assessed discipline of disqualification from working at Penn Station Baltimore, MD without holding an investigation or consulting with the General Chairman. As a result of this the Claimant had to leave his 6 a.m. - 3 p.m. (Sat/Sun Rest) baggage position in Baltimore and work a 5:30 a.m. - 2 p.m. (Fri/Sat Rest) baggage position in Washington, DC starting on December 9, 1999. Prior to this Claimant was removed from his baggage position in Baltimore and placed on some kind of leave starting on October 12, 1999 also without an investigation or consulting with the General Chairman.
- (b) Claimant now be allowed the prevailing baggage rate at time and one half for all the overtime he would have been entitled while on leave from his Baltimore baggage position from October 12, 1999 thru December 9, 1999, also Claimant should be allowed all holiday pay he lost during this period: Claimant now be allowed mileage at the prevailing rate per mile between Baltimore and Washington, DC for each and every day in both directions for every day that the Claimant must work in Washington, DC; Claimant now be paid eight hours pay at the prevailing baggage rate for each and every Friday he should have worked if left in Baltimore and eight hours at time and one half at the prevailing baggage rate for each and every Sunday the Claimant works in Washington, DC until this claim is settled; Also Claimant should be returned to this baggageman position in Baltimore, MD on account of this violation.
- (c) This claim has been presented in accordance with Rule 25 and should be allowed.”

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 dispute, Claimant M. R. Carter was employed as a Baggage/Handler in Penn Station, Baltimore, Maryland. On August 27, 1999, the Claimant's Supervisor, Lydia Wilson, who was in her car on her way to work, stopped at a red light. At this point, the Claimant approached the driver's side window of her car and made violent threats against her, her mother, and her family. He yelled that he was going to kill the Supervisor if she did not stop "f***ing" with him. He also yelled that he was going to kill her mother and her family. The Supervisor reported the incident to the Amtrak Police, as well as to the Baltimore Police Department. The Claimant was withheld from service by the Carrier pending psychological evaluation and the results of the peace order proceeding against him in the District Court of Maryland. On December 2, 1999 the Carrier had the following letter hand delivered to the Claimant. He refused to sign for it, but witnesses confirm that he received it:

"December 2, 1999

Mr. Marvin Carter
2647 Forest Garden Avenue
Baltimore, MD 21207

Dear Mr. Carter:

The Corporation has reviewed the situation involving threats made by you toward a fellow employee at the Baltimore Station, as well as, court documents provided by the District Court of Baltimore, Maryland, the Amtrak Workplace Violence Policy, and the allegations made by your co-worker.

After this careful review, it is the National Railroad Passenger Corporation's decision that you are hereby disqualified from holding

and/or working any position at the Baltimore Station. This disqualification is effective the date of this letter. Your paid leave while awaiting this decision is hereby ceased effective this same date. The Corporation will continue your pay for up to four (4) days to allow (bump) time for you to exercise your seniority.

Therefore, you are hereby notified to exercise your seniority to another position outside the Baltimore Station as per the current T.C.U. Agreement, Rule 3-C-1. Please be aware that any return to service is conditioned on your passing the return to duty physical.

Attached you will find the "Displacement Notice" necessary to protect your seniority.

Sincerely

**K. E. Wiedel
Manager
Customer Services**

**cc: M. Rose
Capt. Canty
B. Blair
S. Peterson
C. Hite
K. O'Connell Z 180 159 760
File"**

At this point, the Claimant bid on a job in Washington, D.C. He began work in Washington on December 9, 1999. Soon thereafter, the instant claim was filed. It was denied by the Carrier and has been progressed to the Board for resolution.

The Board reviewed the record in detail. As a result of that review, the Board has concluded that the Carrier acted in the only way it could in this situation. The Claimant threatened to kill his Supervisor and her family. If the Carrier did not take immediate action to isolate the Claimant from the property and keep him away from his Supervisor, it would have been derelict in its duties and open to serious liability if the Claimant followed through on any of his threats. Threats by employees against other employees or Supervisors calls for strong action on the part of Employers. The record supports the notion that the Claimant is an angry, aggressive employee who was placed under a very restrictive Peace Order by the Maryland courts and was directed to attend anger management counseling as well.

The Board can find no substantive Contract Article that was violated by the Carrier in this instance. It would have been appropriate, however, and good labor

relations if Carrier Management had included the General Chairman, if he chose to participate, in the early discussions of this incident.

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 17th day of March 2003.