

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36773
Docket No. CL-37167
03-3-02-3-126**

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-12799)
that:**

The Carrier violated the Amtrak Northeast Corridor Clerk's Rules Agreement on July 18, 2000, when it acted in an arbitrary and capricious manner when it assessed a formal warning letter against Claimant D. Hoeler, was without just and sufficient cause on the basis of unproven and disproved charges. The Carrier's failure to have Claimant's Union representative participating in the discussions, and/or upon resolutions, mandate a voiding of those results. Claimant D. Hoeler's record now be expunged from any and all formal warning letters that should pertain to the violation on July 18, 2000.

The claim has been presented in accordance with Rule 25 Grievances, from the off Corridor Clerks Rules Agreement dated June 1998, and should be allowed and accepted.”

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 D. Hoeler was working as an Usher at Penn Station in New York City when the instant claim arose. On July 18, 2000, the Claimant was requested to meet with her Supervisor, J. Roseen, to discuss two passenger complaints, as well as comments from an Amtrak Reservation Sales Agent regarding the Claimant's disrespectful attitude while discussing a customer complaint with her. As a result of that meeting, Supervisor Roseen sent the Claimant a Memorandum detailing what they discussed. The Memorandum reads as follows:

"National Railroad Passenger Corporation Interoffice Memo

Date: July 20, 2000
To: D. Hoeler
From: J. Roseen
Subject: Passenger/Employee Complaints

This will confirm our discussion on Tuesday morning, July 18, 2000 relative to the following:

Superintendent M. Gallagher received a telephone call on Monday, July 17, 2000 from Amtrak guest Sandra Ferreira who traveled train #66 on July 13, 2000. She complained that you were rude and less then helpful when she inquired about train delays. Amtrak Reservation Agent Julie Kams alleged you yelled and were disrespectful toward her (copy attached) in a telephone conversation on July 16, 2000.

During our conversation you stated that these allegations were not true. Notwithstanding, we discussed the importance of all employees being helpful and respectful toward our guests and fellow employees as the company will not tolerate anything less. It was further discussed that although you disagreed with these complaints that something upset this guest and fellow employee enough to call and write and we should be conscious of this in the future when dealing with our guests and fellow employees.

Finally, it was discussed that although you disagreed with these allegations, any future complaints of this nature may leave me no choice but to seek corrective action, up to and including, disciplinary action."

Upon receiving this Memorandum, the Claimant sought advice from the Organization and on August 21, 2000 the instant claim was filed.

The Organization contends that the July 20, 2000 Memorandum is far more accusatory than a counseling memo should be. It can only be read to mean that the Claimant is guilty of the allegations against her and is being put on notice that such behavior in the future will result in discipline. The Organization considers this action to be in violation of the Claimant's right to representation and due process, as is required by Agreement.

The Carrier takes the position that the Claimant was certainly involved in some way in inappropriate behavior and she is on notice that such behavior, if repeated, would be unacceptable and may result in discipline. It does not consider the Memorandum as discipline, but only as instructive.

The Board reviewed a long list of such cases in the past. In these cases, the Board has overwhelmingly decided that counseling an employee before formal discipline is assessed is the appropriate path to follow. The Board concludes from its review of this record that the Carrier's actions were not in violation of any terms of the Agreement or any established practice that an Organization representative is required to be present at what is characterized by the Carrier as an employee counseling session. The crux of disputes such as this is how the Memorandum can

be used by the Carrier in the future. The Carrier characterized the July 20 Memorandum as a record of what took place in a counseling session with the Claimant. As such, the Carrier cannot at a future time use the Memorandum in any way but to demonstrate that the Claimant had been personally instructed by Management that discourteous conduct is not acceptable. It cannot be used as if the Claimant is a first offender or as proof that the Claimant was discourteous in this instance. There is no basis, however, for directing the Carrier to delete the Memorandum from the Claimant's file. The July 18 meeting did take place and the record of that meeting can be made a part of the Claimant's file, just as a letter of commendation becomes a part of an employee's file.

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 29th day of December 2003.