

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38237
Docket No. CL-39377
07-3-06-3-322

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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-13142)
that:

1. Carrier acted arbitrarily and capriciously, violated Rule 19 of the ASWC Agreement, when by letter dated July 15, 2005, it notified Claimant Suzie Bleus that she was assessed discipline of termination from the National Railroad Passenger Corporation.
2. Carrier shall now be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned including, but not limited to, wages, holiday pay and overtime had she not been held from service and dismissed from service.
3. Carrier shall now expunge all reference to the charges and discipline from Claimant's record."

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 June 29 the Carrier notified the Claimant to appear for a formal Investigation on July 6, 2005. The notice alleged that the Claimant violated Amtrak's Standards of Excellence with respect to Teamwork by being insubordinate on June 18, 2005, by failing to comply with the Conductor's instructions to water Coach 9140 on Train 91 at the station stop at Richmond, Virginia. The Claimant was withheld from service. The Hearing was held as scheduled. On July 14 the Hearing Officer found the Claimant guilty of the charge and on July 15, 2005, the Carrier dismissed the Claimant from service.

During handling on the property, by letter dated September 2, 2005, the Carrier offered to resolve the matter with a leniency reinstatement without backpay and a final warning. The Organization rejected this offer. By letter dated October 13, 2005, the Carrier unilaterally reduced the termination to a suspension for time served and a final warning. The Organization progressed the claim to the Board.

The Organization contends that the Carrier violated the Agreement by withholding the Claimant from service. We do not agree. Rule 19(a) authorizes the Carrier to withhold an employee from service pending investigation "if his retention in service could be detrimental to himself, another person or the corporation." The Claimant was charged with insubordination, a very serious offense. Retention of an insubordinate employee could be detrimental to the Carrier. Under the circumstances, we find that Rule 19(a) allowed the Carrier to withhold the Claimant from service.

There was no dispute that the Claimant failed to water Coach 9140, although she did water Coach 9141. The Claimant and the Conductor testified and related two completely different versions of the events. According to the Claimant, the Conductor never directed her to water any cars. She watered the cars on her own initiative as part of her duties. She did not water Coach 9140 because the toilet in

the handicapped bathroom was malfunctioning. While at Richmond, she so advised the Conductor. According to the Claimant, the Conductor locked the restroom.

According to the Conductor, he instructed the Claimant to water Coaches 9140 and 9141. As the train was pulling out of Richmond station, he noticed that there was no water stain in the area where he would have expected to see one had Car 9140 been watered. Consequently, he asked the Claimant if she had watered Coach 9140 and she replied that she had not because the handicapped restroom was malfunctioning. According to the Conductor, at another time, the Claimant asserted that she had not watered the car because the hose would not reach.

The Claimant was subjected to vigorous cross-examination by the Charging Officer and the Conductor was subjected to vigorous cross-examination by the Claimant and her Representative. The transcript reflects that the cross-examination of each witness raised questions about his or her testimony. The situation presented illustrates why, as an appellate body, we generally defer to credibility determinations made by the Hearing Officer. The Hearing Officer observes the witnesses and is in a far better position that we are to assess credibility. We note that in the instant case, the Conductor testified by telephone and thus the Hearing Officer did not physically see him testify. However, the Hearing Officer did hear the testimony first-hand and thus heard inflections in the Conductor's voice, whether there was any hesitation in responding to questions, the fluidity of the witness' responses, and numerous other factors that can influence a credibility determination that are impossible to gleam from the black and white of the transcript. Accordingly, we conclude that the Carrier proved the charge by substantial evidence.

In light of the Carrier's unilateral leniency reinstatement of the Claimant, the penalty presented for us to review is not dismissal but a suspension of a little under four months. Insubordination is a very serious offense. However, the record reflects that the Claimant had an otherwise spotless record during her 12 years of service. Moreover, during that period she accumulated 12 letters of commendation from passengers and superiors. The incident of June 18, 2005, while very serious, appears to be an aberration in the Claimant's overall work history. Under the circumstances, we conclude that the penalty, even as modified by the unilateral reinstatement, was excessive. We shall reduce the suspension by 50 percent and order the Carrier to compensate the Claimant for one half of the time she was held out of service.

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 18th day of July 2007.