

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39130
Docket No. CL-39658
08-3-NRAB-00003-060477
(06-3-477)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 13154)
that:

- (1) Carrier acted in an arbitrary, capricious and unjust manner violating Rule 24 and other related rules of the agreement when it assessed discipline of ‘Termination Effective Immediately,’ against Claimant Armida Sepulveda.
- (2) Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what she would have earned, including but not limited to daily wages, holiday pay and overtime, had she not been terminated.
- (3) Carrier shall now expunge the charges and discipline from Claimant’s record.
- (4) Carrier shall now reimburse Claimant for any amounts paid by her for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by the Carrier.”

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 leading to her discharge, Claimant A. Sepulveda was an agent in a call center that handled reservations and related matters via telephone. The Claimant had entered Amtrak Service on October 18, 1991. The Claimant has an extensive disciplinary history which contains the following entries:

DATE	OFFENSE	DISCIPLINE
9/8/03	Absenteeism	Reprimand
7/8/04	Absenteeism	Reprimand
9/23/04	Disobedience	5-Day Suspension (Deferred) Final Warning
10/22/04	Disobedience	5-Day Suspension (Deferred) Final Warning
1/7/05	Absenteeism	10-Day Suspension (Deferred) Final Warning

On June 20, 2005, the Claimant was directed to report for an Intent to Impose Discipline Meeting regarding her receipt of compensation while being off the phone on three occasions in May 2005.

By letter dated June 28, 2005, the Carrier notified the Claimant that she was to attend a formal Investigation on July 6, 2005 to address the following charges and specifications:

**“Charge I: Violation of Amtrak’ Standards of Excellence . . .
Teamwork. . .**

Spec: 1

In that on May 09, 2005, you failed to follow a verbal/written directive issued to you on July 15, 2003 by Team Leader, Dee Ruiz when you did not obtain off-phone approval from management, which resulted in your being compensated for 31 minutes or more for which you provided no service.

Spec: 2

In that on May 19, 2005, you failed to follow a verbal/written directive issued to you on July 15, 2003 by Team Leader, Dee Ruiz when you did not obtain off-phone approval from management, which resulted in your being compensated for 21 minutes or more for which you provided no service.

Spec: 3

In that on May 20, 2005, you failed to follow a verbal/written directive issued to you on July 15, 2003 by Team Leader, Dee Ruiz when you did not obtain off-phone approval from management, which resulted in your being compensated for 14 minutes or more for which you provided no service.”

The Hearing took place on July 26, 2005 pursuant to which, in a letter dated August 4, 2005, the Claimant was notified that she was terminated effective immediately for violating Amtrak’s Standards of Excellence.

By letter dated September 2, 2005, the Organization appealed the decision specifying that the Carrier did not meet its burden of proof and that the discipline assessed in the case was unwarranted and excessive. The Organization claimed that

the Claimant had to go to the bathroom because of a medical issue caused by the surgical removal of her gall bladder. On January 31, 2006, Labor Relations Officer L. D. Miller denied the appeal. On March 16, 2006, the matter was appealed to the Third Division for adjudication.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. The Organization contends that the burden of proof in a discipline matter such as this is on the Carrier; that burden of proof has not been met. The Organization claims that the Carrier has been arbitrary and capricious in its treatment of the Claimant, that the Carrier has abused its discretion, and that the Carrier's determination to discipline the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. The Claimant should not be penalized for having a medical issue that caused her to be away from her desk. The Organization asserts that the Carrier should now be required to overturn the Dismissal and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it has met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. According to the Carrier, a review of the transcript developed during the Hearing makes it clear that the Claimant was absent as charged. Thus, the Claimant violated Amtrak's Standards of Excellence. Based on the instant offense and the Claimant's extensive disciplinary history, dismissal is the appropriate penalty.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325 and Third Division Award 16166.)

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The Board found substantial evidence in the record to sustain the Carrier's position in whole. We note that the Carrier has proven that the Claimant did violate Amtrak's Standards of Excellence. Based on the instant offense as well as her extensive disciplinary history, we have determined that Dismissal is an appropriate penalty.

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 7th day of July 2008.