

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39933
Docket No. MS-40429
08-3-NRAB-00003-080067**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Murian M. Tyler
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Violating Rule 24 and Article VI of the June 1, 1998 Mediation Agreement when, by notice of November 19, 2003, is assessed discipline of Termination.

Carrier shall now reinstate claimant to service with seniority rights unimpaired and compensate claimant and amount equal to what she would have earned, including but not limited to daily wages, holiday pay and Overtime, had she not been withheld from service and discipline not been assessed.

Carrier shall now expunge the charges and discipline from claimant’s record.

Carrier shall now reimburse claimant for any amounts paid by her for medical surgical or dental expense to the extent that such payments would be payable by the current insurance provided by Carrier.

When they failed to schedule an intent to impose discipline meeting and proceeded straight to an Investigation, The discipline is excessive for being sick one day and two early departures. Also Violating their own policy of ‘Standards of Excellence’ when they went from the 3rd step straight to the 5th step of dismissal. Excluded the forth step of suspension of (10) days, where the rules clearly

states For a more serious violation of operating rules involving hazards or accidents or major inconvenience to passenger, which neither of the offenses occurred. I work for Amtrak for 22 years and never signed any documentation concerning 'Standards of Excellence' where's as at the meeting of the 3rd step of suspension of three days, it was not brought to my attention that there was a policy For attendance and that I was on step three of the policy."

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 October 20, 2003, the Carrier notified the Claimant to report for an Investigation on October 23, 2009, concerning charges of excessive absenteeism stemming from absences on September 6, 23 and 26, 2003. The Hearing was postponed to and held on November 18, 2003. On November 12, 2003, the Carrier notified the Claimant to report for an Investigation on November 18, 2003 concerning charges of excessive absenteeism stemming from an absence on October 17, 2003 and early departures on October 1, 2, 8, 9, 11 and 25, 2003. Both Investigations were conducted on November 18, 2003. On November 19, 2003, the Hearing Officer found the Claimant guilty of the charge concerning the September absenteeism and found her guilty of the charges concerning absenteeism and early departures on October 1, 17 and 25, 2003. By letters dated November 19, 2003, the Carrier notified the Claimant that in light of the Hearing Officer's findings, she was dismissed from service.

The Claimant's Organization appealed her dismissal and the claims were handled in the usual and customary manner on the property without resolution. The Claimant's Organization then appealed to Public Law Board No. 6242. In Award 70, Public Law Board No. 6242 overturned the finding of guilt with respect to the September 6, 23 and 26, 2003 absences but upheld the dismissal stemming from the absence and early departures of October 1, 17 and 25, 2003, and denied the claim.

Essentially, the Claimant seeks to relitigate the claim before this Board. However, the decision of Public Law Board No. 6242 was final and binding and may not be relitigated. As stated in our Third Division Award 37312, where a Board has already disposed of a matter, this "Board has no jurisdiction to re-try the same matter nor may the Board be used as a vehicle to challenge the initial Award." Accordingly, the claim must be dismissed.

AWARD

Claim dismissed.

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 31st day of August 2009.