NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25226
Docket Number MS-25420

James Robert Cox, Referee

PARTIES TO DISPUTE: (James D. Todd
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(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission covering an unadjusted dispute between myself and Amtrak, involving the question of my claim for reinstatement to service as Baggageman at Los Angeles Union Station with seniority date unimpaired and for reinbursement (sic) of wage loss resulting from my removal from service on Dec. 30, 1982 and my dismissal from service effective Jan. 28, 1983 as a result of an investigation held on Jan. 21, 1983 in Los Angeles."

OPINION OF BOARD: Formal investigation in this case was conducted January 21, 1983, in absentia following two postponements granted at the Organization's request. Claimant James D. Todd did appear at the place of Hearing that day but, shortly before the Hearing was scheduled to commence, informed the Hearing Officer that he was not going to appear because his witnesses weren't expected to be present. When Mr. Todd failed to attend the formal Hearing, his Organization unsuccessfully requested a postponement. According to the transcript, when Mr. Todd appeared for a prior Hearing, January 10, 1983, he did not indicate that he intended to call any witnesses.

Todd's request for a postponement of the Investigation January 21st was not made through the Division Administrator. The Organization due to Todd's sudden withdrawal, could not request any postponement until the commencement of the Hearing.

Robert Winokur, Station Supervisor at the Los Angeles Union Station, received a telephone call from Mr. Todd, a Baggageman under his supervision, sometime after 11:00 p.m., December 28, 1982. Winokur was familiar with Todd's voice, having spoken with him previously on the telephone. Todd identified himself, then stated he would not be in to work at his scheduled reporting time of 7:00 a.m. the following morning. When asked the reason, Claimant replied that he was sick. He was informed that when he returned to work, he should bring a Doctor's release from an attending physician. After a pause, Todd responded, "You know why?--F...you'"

Claimant Todd did not appear for work December 29th. When he returned on the 30th, he did not have the requested medical verification of absence. He was removed from Service and scheduled to appear for formal investigation for violation of Rules I & J of the National Railroad Passenger Corporation Rules of Conduct, based upon the allegation "that...Tuesday, December 28, 1982, at approximately 11:05 p.m. you were insubordinate, otherwise vicious, and directed profane and vulgar language toward Supervisor R. Winokur when he instructed you during your telephone conversation to bring in medical verification of an illness you claim for December 29, 1982." The Investigating Officer assessed the discipline of termination for violation of Rules I and J.

The Board finds no violation of Rule 24 since, based on the uncontested evidence, Claimant failed and refused to bring in a requested medical verification of his illness, after responding to the request with profanity directed at his Supervisor. There is no evidence that the Carrier's practice of requiring medical verification had been disparately applied.

The hearing was properly conducted since Claimant failed, after having been given two previous postponements, to make a request for a third postponement in a timely manner. The claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.