

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Wesley T. Hall, Jr.

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

A. "Insubordination

On July 8, 1985, I was working as a Duplicator Operator. After putting the machine into operation, I sat on three (3) boxes of paper to watch the machine. I had sat while running the Xerox 9900 for months as have other employees before and after this incident.

1. Mr. Bill Lake, Manager of Reprographics, walked up to me and told me to 'get up.'

2. He appeared to be angry and he spoke in a threatening tone of voice.

3. Not knowing what to expect I decided to remain seated.

4. There was no reason for Mr. Lake to order me in a threatening voice to 'get up' unless he was threatening me or harassing me.

5. I was not violating any rule by sitting near the Xerox machine. In fact, I was working as required on my job. I was not insubordinate.

B. Suspension

I was put out of service on July 9, 1985, one day after the July 8, 1985 incident, without a hearing, which is in violation of Rule 24(a) in the agreement between Amtrak and B.R.A.C. which states that, 'An employee who has been in service more than sixty (60) calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employee shall accept dismissal or other discipline in writing and waive formal investigation. The employee may be held out of service pending such investigation only if his retention in service could be detrimental to himself, another person, or the Company.'

1. I was given a 'Notice for Holding Employee Out of Service' for by Bill Lake and chased off of Amtrak's property by Eddie Hendrix, Supervisor of Reproduction (see Attachment B).

2. My co-worker, Lena Richardson, told me to wait in her truck. Mr. Hendrix then ordered Mrs. Richardson to remove her truck off of Amtrak's property.

3. On July 12, 1985, I was further harassed by my Supervisor, Eddie Hendrix, when he sought to get into my apartment to remove legally obtained railroad property, i.e., my pass. As you will note in the letter of charges I was asked by John Stulak, Vice President of Personnel and Administration, to surrender my pass -- but due to the fact that I has been chased off of Amtrak's property and told not to return I had no idea as to how I was going to surrender my pass (see Attachment C).

4. The so called safety rule is not being enforced equally to all employees. In the May 20, 1986 memo, written by Bill Lake, he stated that he allowed other employees to sit while operating machines. On page one, fact #5, Mr. Lake states that employees were allowed to sit while using a staple machine and on page two, fact #1, he allowed Mr. Anthony Hood to sit near the Xerox 9900 while it was running. This was the same thing I was doing, (see Attachment D).

5. At my hearing Mrs. Lena Richardson testified that she was allowed to sit at the Xerox 9900 after I had been chased off of Amtrak's property (see transcript, page 16).

D. Relief

I was given a ninety (90) day suspension for insubordination which was later cut in half by forty-five (45) days. I was not insubordinate and Amtrak failed to follow proper procedures, according to the agreement with B.R.A.C. in handling my case."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On July 10, 1985 Claimant was notified to report for investigation:

"In that you did on July 8, 1985, while on duty as Duplicator Operator, wrongfully refuse to comply with instructions repeatedly issued by Billy R. Lake, Manager Reprographic Services, to not sit while operating Xerox Model 9900."

The investigation was held on August 5, 1985, and on August 14, 1985, the Hearing Officer notified Claimant the charges were sustained and a penalty of 90 days actual suspension was imposed.

After Claim was filed and the matter conferenced on the property, the Manager, Labor Relations and Administration, wrote the Local President that the investigation showed Claimant's guilt, but because the Claimant had eleven years of discipline-free service the suspension was reduced to forty-five days.

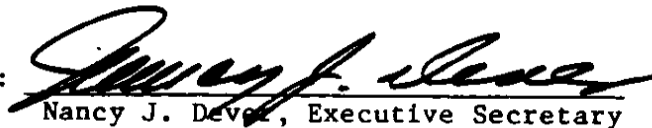
We have carefully reviewed the transcript of the Investigation and we conclude it afforded Carrier with substantial evidence from which to conclude Claimant was guilty of insubordination. We see no reason to interfere with the discipline assessed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.