

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Bradford R. Corey
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Violation of the First and Third Paragraphs, Rule 'T', AMT-1, in that I failed to report for my assignment as Posting FRPC-3 Position, Tour of Duty 11:30p.m., Thursday, March 5, 1987 to 7:00a.m., Friday, March 6, 1987."

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 employes 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 were given due notice of hearing thereon.

The record indicates that Claimant did not appear to protect his assignment on March 5, 1987. During the subsequent disciplinary Hearing, Claimant readily admitted his guilt of the charged infraction, but testified that the absence was caused by a narcotics problem that day. He also indicated in his further handling of the matter on the property that he had subsequently received proper treatment and rehabilitation for drug abuse and was prepared to work. The record also reveals that Claimant had been disciplined on nine prior occasions and had been suspended a total of 210 days for lateness and absences. In addition, he had been dismissed from Carrier's service for lateness in July 1986, and had been reinstated on a leniency basis in October 1986.

Claimant's letter to Carrier dated March 1, 1988, is instructive with respect to the key elements in this dispute. In relevant part Claimant said:

"Sir, there is no question that I failed to cover my assignment on March 5, 1987. It is noted that during my investigation and in the three (3) subsequent appeals I acknowledged that I had a serious drug problem at that time. It has been pointed out to the

carrier that I did enroll and complete an Employee Assistance Program in an effort to overcome my problem and reconstruct my life....I was hoping however, that the carrier would take into consideration my experience and predicament and reach a compassionate decision which would allow me to continue my employment with Amtrak in one capacity or another....Unfortunately, reinstatement of employees on a leniency basis is at the sole discretion of the carrier."

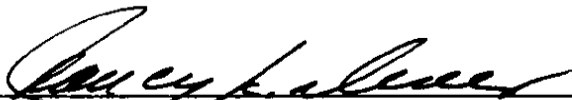
The essence of Claimant's position is a plea for leniency. The Carrier notes that such action is its sole prerogative, and the Board must agree. Regardless of the action which the Board might take, if indeed it had the authority and discretion to do so, it cannot impose its conclusions in the realm of leniency of the Carrier. This is so well established that it needs little citation. Second Division Awards 7276 and 7589 are directly on point. In the instant case no rule violation has been alleged, the Hearing was properly conducted and there is no evidence that Carrier's disciplinary decision was arbitrary, capricious or discriminatory. The Claim must be denied.

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 28th day of August 1990.