

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28887
Docket No. CL-29344
91-3-90-3-240

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered:

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM: "(Carrier's File No. TCU-D-3084/TCU File No. 393-D9-080-D)

Claim of the System Committee of the Brotherhood (GL-10447) that:

1. Carrier, acted in an arbitrary and capricious manner and violated Rule #24 of the Agreement, when by notice of June 26, 1989, it assessed discipline of termination from service against Claimant Michael Belcher.
2. Carrier shall now reinstate to service with seniority rights unimpaired and compensate Claimant an amount equal to what he would have earned, including but not limited to daily wages, overtime and holiday pay had discipline not been assessed.
3. Carrier shall now expunge the charges and discipline from Claimant's record.
4. Carrier shall now reimburse Claimant for any amounts paid by Claimant for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by 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 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 waived right of appearance at hearing thereon.

On December 21, 1988, the Claimant was terminated from service, but on April 14, 1989, Carrier agreed to reinstate him without pay for time lost, on a "last chance" basis "...with the understanding that he undergo and pass a

re-entrance to service physical examination..." The reinstatement was to become effective "...as soon as the requirements...have been met."

On April 27, 1989, Claimant was directed to present himself within five (5) days of receipt to undergo the physical. When the Claimant failed to comply, a station Supervisor spoke personally to the Claimant (on May 13, 1989) at which time he agreed to comply two days later. He failed to keep the appointment which prompted further correspondence concerning a requested medical leave of absence and a job displacement notice. Finally, Carrier issued an Investigation notice for failure to comply with instructions from Supervisors.

The Hearing proceeded without the Claimant being present, but the hearing officer went to extreme length to ascertain that the notice had been forwarded to appropriate addresses, and the Organization's Representatives were unable to account for the absence. Subsequent to the Investigation, and in contemplation of the evidence presented thereat, the Claimant was dismissed from service.

Although Claimant concedes that he received the transcript and was able to return to work in mid-June, it was not until late November that he advised of his defenses.

The Claimant was aware of the need to undergo a physical examination. At the very least, he had an obligation to keep the Carrier advised of his status and to appear at the Investigation to explain his position. Even if he were unaware of the Hearing (and the record is to the contrary) he had a duty to be much more prompt in his explanations.

The Claimant appears to have made his own unilateral decision to boycott the Carrier's instructions, and then to attack the personnel action at a later time. Had he taken and failed the examination, then perhaps a much different dispute might be before us, but such is not our issue here.

Claimant suggests that Carrier was required to honor a request for a medical leave. Even presuming that said issue is before us, the Claimant's first requirement was to obtain reinstatement under the April 14, 1989, understanding. This he failed to do.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.