

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31441  
Docket No. SG-31879  
96-3-94-3-203

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(National Railroad Passenger Corporation  
( (AMTRAK)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

Claim on behalf of C. Clapp for reinstatement to service with payment for all lost time and benefits, and with seniority unimpaired and the record of discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 58, when it failed to provide the Claimant with a fair and impartial hearing on charges of misconduct and then imposed the harsh and excessive discipline of dismissal from service."

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 waived right of appearance at hearing thereon.

On April 2, 1993, Claimant was directed to report for an investigation on April 7, 1993. The notice charged Claimant with directing cruel and vicious comments toward a fellow employee on February 26 and March 29, 1993, and with creating a hostile work environment for the fellow employee from February 26, through March 29, 1993. The Hearing was held as scheduled, and on April 15, 1993, Claimant was found guilty of the charges and dismissed from service. At the time of his dismissal, Claimant was 12 days shy of one year of service and had no prior disciplinary record.

The Organization contends that dismissal was too severe a penalty in this matter. In the Organization's view, Carrier should have followed progressive discipline and given Claimant an opportunity to correct his behavior. Carrier contends that it proved Claimant's guilt and that Claimant's short tenure and the severity of the misconduct justify the penalty imposed.

The evidence of Claimant's guilt was overwhelming. The evidence established that Claimant directed sexual slurs and other derogatory language and sexual innuendo toward a female coworker. Claimant suggested that the coworker obtained her position through sexual favors rather than by contractual means, that she had oral sex with her foreman, and that she wanted to have sex with Claimant. Claimant told the coworker that other employees were going to rape her and accused her of being a bad mother. Claimant engaged in several acts of unwanted physical touching of the coworker, including grabbing her and pulling her from the front seat of Carrier's truck into the back seat and then squeezing her hand so hard as to cause her pain. Claimant also came up from behind and grabbed the coworker and bumped into her with his body. On several occasions he pulled the hood of her jacket.

This Board is appalled by Claimant's disgusting and vicious behavior. To characterize Claimant's actions as offensive, hostile and intimidating is a severe understatement. Claimant's misconduct falls well beyond the boundaries of civility.

Carrier was not only justified in taking action, it was obligated to do so to safeguard the rights of all of its employees to a safe and secure work environment. Claimant was told several times by the coworker and the Foreman to stop his offensive, hostile, intimidating actions, but despite such admonitions, he persisted. Indeed, this Board is distressed that the Foreman and other members of the gang allowed Claimant's conduct to continue for over a month.

There are no explanations, excuses or other factors that can mitigate the severity of Claimant's uncivilized and absolutely indecent behavior. Claimant's dismissal was fully justified. The suggestion that he should have been given a second chance is frivolous.

AWARD

Claim denied.

Form 1  
Page 3

Award No. 31441  
Docket No. SG-31879  
96-3-94-3-203

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 25th day of April 1996.