

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32035
Docket No. CL-32772
97-3-96-3-52**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11202) that:

- 1. The Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement when, by notice of September 29, 1994, it assessed discipline of 'Termination from Service' against Claimant Henry Hill, pursuant to an investigation held on September 20, 1994.**
- 2. The Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what she could have earned, including but not limited to daily wages, holiday pay and overtime, had discipline not been assessed.**
- 3. The Carrier shall now expunge the charges and discipline from Claimant's record.**
- 4. Carrier shall now reimburse Claimant for any amounts paid by him 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 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 were given due notice of hearing thereon.

Prior to his dismissal, Claimant was a part-time Reservation Sales Agent at Carrier's Western Reservation Sales Office. His seniority date was August 20, 1993. On August 31, 1994, he was notified to report for an Investigation in connection with the following charge:

"Violation of Rule 'F' part 1 and 'F' part 3 of the Amtrak Rules of Conduct in that on August 10, 1994, while on duty as a Reservation Sales Agent at the Western Reservation Sales Office you allegedly provided false information to Amtrak caller Jammie Steward when you advised her that train 28 had been discontinued, and then you went on to tell her that her ten year old daughter had been kicked off the train due to a ticket problem. You told Ms. Steward that you were only joking thus causing anguish, pain and suffering to the caller and a loss of goodwill toward Amtrak."

A Hearing was held on September 20, 1994. By letter of September 29, 1994, Claimant was dismissed from service.

A careful reading of the transcript in this case reveals that the bulk of the evidence against Claimant is Ms. Steward's original written complaint and live testimony (via telephone) during the September 24, 1994 Investigatory Hearing. The candor and consistency of her testimony is in sharp contrast to the Claimant's protestations that she must have "misunderstood" him. Claimant's misguided attempt at humor in the situation was anything but humorous. He caused the mother of a minor passenger considerable concern, imperiled the Carrier's reputation, and demonstrated an appalling lack of judgment.

Under the circumstances we find no reason to overturn Carrier's assessment of discipline.

AWARD

Claim denied.

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 6th day of May 1997.