

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33181
Docket No. CL-33952
99-3-97-3-378**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11761) that:

- 1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of October 13, 1995, it assessed discipline of ‘Termination from Service’ against Claimant Donna Hogan, pursuant to an investigation held on October 5, 1995.**
- 2. Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what she could have earned, concluding but not limited to daily wages, holiday pay and overtime, 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 her for medical, surgical or dental expenses to the extent that such payments would be payable to the current insurance provided 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.

On August 2, 1995, Claimant was on duty as an Extra Board Ticket Agent assigned to the Millbrae Station selling tickets for Caltrain. She sold a ticket to Caltrain customer Frederick Ohly, Associate General Counsel for Amtrak, who purchased a ticket to ride the train from Emeryville to San Jose. While transacting the ticket purchase, the Claimant and Ohly held a brief conversation. During this conversation the Claimant made derogatory comments about Amtrak management. Claimant was charged with misconduct and terminated from service by the Carrier that same day for allegedly violating Amtrak's Rules of Conduct F-1 and F-3. A subsequent Hearing sustained the following charges:

- (1) "Your alleged failure to follow Amtrak's Rules of Conduct, Rule F-1, which reads in part, 'All employees are required to conduct themselves in a courteous and professional manner in dealing with the public and other Amtrak employees. . .'"
- (2) "Your alleged failure to follow Amtrak Rules of Conduct F-3, which read in part, ' . . . Employees must conduct themselves on and off the job so as not to subject Amtrak to criticism or loss of good will.'"

Carrier maintains that Carrier official Ohly did not identify himself as a Carrier agent before Claimant made the disparaging remarks about Amtrak Managers. Claimant said the words were spoken to Ohly with her belief that he was a Carrier official, not an agent of Amtrak. In any case her speech was intemperate, and there is no indication on this record that Claimant actually confirmed her "assumption" that Mr. Ohly was a Carrier employee. Carrier has the right to exemplary conduct from employees in contact with the public, and Claimant is no exception to that right. A review of her record, however, indicates that, by and large her conduct has been more than satisfactory - and includes letters from customers commending the service she

rendered on Carrier's behalf. In light of that fact, and her long tenure with Carrier, the 15 month suspension is excessive. Accordingly, her discipline is reduced to six months actual suspension.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1999.