

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34179
Docket No. CL-35244
00-3-99-3-8**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12238) that:

- 1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of March 26, 1997 it assessed discipline of termination against GEB Ticket Clerk, Wayne Lambert.**
- 2. Carrier shall be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate him an amount equal to what he could 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.”**

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.

While working as a Ticket Agent at the Joliet, Illinois station on January 25, 1997, the Claimant allegedly harassed an Amtrak customer. The alleged victim reported an incident with the Claimant verbally to the Amtrak police and made a criminal complaint with the Joliet Police on the day of the alleged incident. A written statement made by the alleged victim was procured by the Amtrak Police Department at a later date. The Claimant was removed from service by the Carrier on February 8, 1997, following the Carrier's receipt of a written statement from the alleged victim, and he was charged with violating Rules D, F1 and F3 of the Amtrak Rules of Conduct. A disciplinary Hearing was held on March 21, 1997, following which the Carrier assessed the Claimant the discipline of termination on March 26, 1997. An appeal was made on behalf of the Claimant in a letter dated April 9, 1997 by the Vice General Chairman, TCU - Amtrak Division. In that letter, the Organization contended that the Carrier violated Rule 24 of the Agreement. That appeal was denied as were subsequent appeals.

It is the position of the Carrier that the Claimant violated the following Rules from the Amtrak Code of Conduct. The specific Charges against the Claimant read as follows:

"CHARGE ONE: Rules of Conduct, Rule D: which states, in part: 'Employees must understand and obey company policies, procedures and special instructions.'

CHARGE TWO: Rules of Conduct, Rule F1: which reads, in part: 'All employees are required to conduct themselves in a courteous and professional manner in dealing with the public.'

CHARGE THREE: Rules of Conduct, Rule F3, which reads, in part: 'Employees must conduct themselves on and off the job so as to not subject Amtrak to criticism or loss of good will.'

SPECIFICATIONS: In that while assigned as a Ticket Agent, G.E.B., at the Joliet, IL ticket office on Saturday, January 25, 1997, it is alleged that

you allowed a female passenger behind the Amtrak ticket counter. It is also alleged once behind the ticket counter you hugged this passenger against her will causing her to become nervous and afraid.

It is further alleged that you offered to drive her home in your car, and if she wanted, she could come to your house.”

It is the Carrier’s position that the Claimant was accorded a fair and impartial Investigation, thus no violation of Rule 24 occurred. Further, the Carrier contends that the record contains substantial evidence, in particular the alleged victim’s written testimony, that the assessed discipline of termination is warranted and commensurate with the seriousness of the alleged offense. Additionally, the Carrier asserts that the discipline in the case at hand was the Claimant’s sixth assessment of discipline and the third time he was found guilty of fraternization with female passengers.

The Organization’s position is that the Carrier circumvented the provisions of Rule 24 of the Agreement by assessing the discipline of termination of employment against the Claimant, a 17-year employee, without clear and convincing evidence. The Organization points out that the criminal complaint against the Claimant was dropped before the Hearing commenced, and contends that the alleged victim is an unreliable witness.

The record contains conflicting evidence. The Joliet Police report dated January 26, 1997, states that “. . . Lambert then began to let go of her as he moved his hands to her breast area and he began to fondle her breast through her coat. The victim attempted to get away but Lambert stopped fondling her breast and grabbed her and held her closer to him.” In the Hearing testimony, on page 28, when asked to confirm the accuracy of the police record whether or not the Claimant moved forward and put his hands on the alleged victim’s breast and began to fondle her the alleged victim stated, “Well, that’s when he hugged me and he put his arms, not touching my breasts, but that was when he was hugging me.” When asked, “So, he did not fondle your breasts?” the alleged victim stated “no.”

The Claimant testified that the alleged victim left, and then returned to the Amtrak office after trying to buy food from a vending machine with a dollar he had given her. The Claimant states, “She was very upset and I held out my arms to her. I hugged her, she hugged me back. There was no improper touching, there was no forced

pulling. It was a very brief hug and that was that.” The alleged victim does not recall that the Claimant gave her money, and her testimony is that she cried after she left the Claimant’s office not while in his office for a second time as the Claimant testified.

In her written complaint/witness statement for the Amtrak Police Department the alleged victim states that the Claimant was offering to take her home, inviting her to his house, rubbing her back and, “telling me to hug him back . . . he was trying to make me hug him back and asking me to kiss him, I tried to push him away, and he said don’t push me away. C’mon give me a hug.” Further, the alleged victim states, “I was just scared and wanted out.” The Claimant and the alleged victim acknowledge that a hug took place, but their testimonies of the nature of the hug are inconsistent.

The record also contains evidence that the alleged victim stated in the Joliet Police report that the Claimant asked her to come into the back office while he looked up the information on her train, yet in her Hearing testimony she states that she asked to borrow the phone, which is same rationale offered by the Claimant for her being in the Amtrak back office.

While the Carrier asserts that the Claimant’s statements were inconsistent throughout his testimony, the record does not contain evidence that makes clear that the alleged victim’s report and testimony of the alleged incident are consistent. What is clear is that the alleged victim missed her train, she was upset about missing the train, she asked the Claimant to use the phone, the Claimant let her use the company phone, and at some point a hug transpired between the two.

While the Claimant testified that he believes it a part of his duty to help customers, including consoling them if necessary, it is reckless for him to engage in an activity that puts the Carrier at risk. Inviting a member of the public into an Amtrak office, especially one with a cash drawer, jeopardizes the integrity of Carrier property. The Claimant also exhibited poor judgement when hugging a member of the public while on duty as a Carrier representative.

The Board finds that the Claimant in this case showed serious lack of good judgement, but it does not find sufficient evidence to warrant the quantum of discipline assessed, as there is no clear evidence of harassment. In the absence of strong evidence that would warrant the discipline of termination, the Board finds the discipline assessed

excessive under the circumstances. Therefore, the Board holds that discipline shall be reduced to a six-month actual suspension without pay.

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 20th day of July, 2000.