

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35397
Docket No. CL-36084
01-3-00-3-297**

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12611) that:

- 1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 19 of the Agreement, when by notice of August 18, 1999, it assessed discipline of "Termination from Service" against Claimant Johnny Villegas, pursuant to an investigation held on August 9, 1999.**
- 2. Carrier shall now reinstate Claimant Villegas to service with seniority rights unimpaired and compensate Claimant an amount equal to what he could have earned, including 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 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.

At the time of the incident that gave rise to this case, Claimant J. Villegas was employed as a Food Specialist working out of Los Angeles, California. On July 12, 1999, the Claimant was assigned to work Train 14 scheduled to depart Los Angeles at 9:30 A.M. The Claimant missed the train. He called in at 10:30 A.M. to say he overslept. As a result of that incident, the Claimant was sent the following Notice of Hearing specifying the charges against him:

“Dear Mr. Villegas;

You are hereby directed to appear for a formal investigation as indicated below:

Date: July 16, 1999
Time: 11:00 AM
Place: Hearing Office
Los Angeles Union Station
810 North Alameda Street
3rd floor
Los Angeles Ca 90012

Charge 1: Alleged violation of Amtrak's Standards of Excellence titled ‘Attending to Duties,’ which reads in part. . . . ‘It is important for all of us to report for work on time and perform our duties during the prescribed hours. If you know you are going to be late or absent altogether, inform your supervisor as far ahead of time as possible.’ In that while assigned as food specialist, train #14, July 12, 1999, you failed to report for your position nor did you call off prior to the train's departure.

You may produce any witnesses you so desire, and you may be accompanied by a representative as provided in your current and governing agreement without expense to the National Railroad Passenger Corporation.

All requests for postponements of this investigation must be handled through the Hearing Office, 810 North Alameda Street, Los Angeles, CA, 90012."

A Hearing in the matter was held on August 9, 1999. As a result of that Hearing, the Claimant was found guilty as charged and was dismissed from the Carrier's service.

The Board has reviewed the Hearing record, the Claimant's past work record, and the conditions surrounding the July 12, 1999, missed assignment. The Claimant has been a relatively good worker over his 12 years with the Carrier. He has received some commendations for good performance, as well as discipline for attendance problems. His last incident occurred about two years prior to the July 12, 1999, incident. Based on the total record of the case, the Board has concluded that dismissal from service is a far more severe penalty than is justified in this instance. Consequently, the Board will direct that the Claimant be returned to work on a last-chance basis, with seniority intact and all other rights unimpaired, but without pay for lost time or benefits. The Claimant should be aware that any future violations of the Carrier's Time and Attendance Policy will most likely result in his permanent dismissal from Amtrak.

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 26th day of April, 2001.