

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35479
Docket No. CL-36065
01-3-00-3-35

The Third Division consisted of the regular members and in addition Referee Andr  e Y. McKissick 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-12532) that:

1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when on or about July 20, 1998, it held Claimant Calvin Whetstone from service pending a disciplinary investigation. Claimant’s retention in service could in no way be construed as detrimental to himself, another person or the company.
2. Carrier further violated the Agreement when it failed to notify Claimant Whetstone of it’s intention to discipline him, failed to hold the required notice of intent meeting, and failed to provide the Organization with a list of known witnesses and known documents related to the Claimant’s alleged offense.
3. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of August 24, 1998, it assessed discipline of “Termination from Service, Effective Immediately” against Claimant, pursuant to an investigation held on August 17, 1998.
4. Carrier shall now reinstate Claimant 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.

5. Carrier shall now expunge the charges and discipline from Claimant's record.
6. Carrier shall now reimburse Claimant for any amounts paid by him for medical, surgical or dental expenses to the extent that such payment 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.

Rule 24 is, in pertinent part, as follows:

"RULE 24 - DISCIPLINE - INVESTIGATION - APPEAL

- (a) An employee who has been in service more than ninety (90) calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employee shall accept such dismissal or other discipline in writing and waive formal investigation. An employee may be held out of service pending such investigation only if his retention in service could be detrimental to himself, another person, or the corporation.
- (b) If the corporation decides that disciplining of an employee is warranted and the employee has not been withheld from service, the employee will be notified in writing, with a copy to his duly

accredited representative, of the intent to discipline him. The notice will advise the employee of the specific charge(s) and the reason(s) for the intended imposition of discipline. A letter of intent to impose discipline shall not be issued to an employee for any offense of which the corporation has had actual knowledge thirty (30) calendar days or more, except where a civil action or criminal proceeding results from the offense, in which event the letter of intent to impose discipline may be made within thirty (30) days of the final judgment . . .”

It is the position of the Organization that the Claimant was terminated without sufficient cause. Although the Claimant admits that he left the property without permission on July 20, 1998, the Organization asserts that the Claimant left when he became ill and no Supervisors were around at that interval. Besides, the Organization points out that the Claimant properly brought in a legitimate note from his physician to substantiate his claim. Under these particular circumstances, the Organization asserts that mitigation should be available to the Claimant. In addition, the Organization argues that the Claimant's past disciplinary record cannot be used to prove this current claim of termination. Lastly, the Organization points out that the Carrier failed to hold a “Notice of Intent” meeting, in violation of the Agreement.

The Carrier rebuts the Organization's contentions by asserting that the Investigation was fair and impartial. It is the Carrier's position that the Claimant had ample opportunity to explain his illness to at least two Supervisors. In addition, the Carrier points out that the medical excuse was devoid of any relevant information which would establish that the Claimant left work due to an actual illness. Besides, the Carrier notes that absenteeism is a serious offense and that it is not uncommon to terminate one in the railroad industry for this reason. Lastly, the Carrier points out that the Claimant has a deplorable past disciplinary record - all involving absenteeism and AWOL entries between January 9, 1997 and June 1, 1998. Based on all of the above, the Carrier requests the Board to deny this claim.

The Board finds that this claim should be sustained for the following reasons. The Board finds the doctor's note to be genuine thus legitimate. Therefore, such medical evidence validates the Claimant's illness. The Board further finds that waiting 15 - 20 minutes for a Supervisor to explain his sudden departure to be reasonable under the circumstances. In light of the fact that the Claimant is an 11 year employee, the Board

finds that the Claimant should be given one last chance and should be reinstated with seniority intact and all other rights unimpaired. However, the Board will disallow any back pay due to his past record. Based on all of the above, the Board finds that the Carrier violated Rule 24 when it terminated the Claimant for the aforementioned reasons.

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 22nd day of May, 2001.