

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35925
Docket No. CL-35732
02-3-99-3-765**

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 that:

- 1. Amtrak acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement when it rendered its decision to discipline the Claimant (Stephanie Crenshaw) following a formal investigation.**
- 2. Carrier shall now expunge the discipline from Claimant’s record; compensate Claimant for all lost time, if any; and reinstate all seniority rights, benefit rights, and other employment privileges that may have been taken away as a result of this wrongful discipline.”**

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 her discipline, at issue in this case, the Claimant was employed in the Reservation Sales Office in Riverside, California. On December 4, 1996, the Claimant was directed to report for a formal Investigation regarding her alleged absenteeism. Specifically, she was charged with violation of Amtrak's attendance policy, as set forth in the Standards of Excellence manual. A Hearing was held on January 13, 1997. Following the Hearing, the Claimant was notified that she had been found guilty of five of the eight attendance violations with which she was charged. She was assessed a five-day actual suspension and a final warning notice.

The Organization filed a claim protesting the Claimant's discipline on February 4, 1997. That claim was denied and the matter was subsequently progressed up to and including the highest Carrier Officer authorized to handle such appeals, after which it remained unresolved.

The Carrier maintains that, even with exoneration on three of the eight charges of absenteeism, the Claimant has three acknowledged absences or instances of tardiness within a 30-day period. It asserts that, in light of the Claimant's prior discipline record, particularly her waivers of prior disciplines for attendance problems, the discipline assessed was fair and warranted.

The Organization contends that of the three remaining charges, the November 20, 1996 absence of one hour and 58 minutes was excusable, because the Claimant's daughter had been upset by witnessing a shooting at her school. The Claimant testified that she had been so concerned about her daughter that she failed to call in - yet returned to work immediately after dropping her daughter at home.

Upon review of the evidence before the Board we find that the penalty of a five-day suspension was warranted. Although the Claimant was understandably upset by her daughter's call to pick her up at school, the Claimant offered no credible explanation of why, once she found her daughter was unharmed, she failed to contact the Carrier regarding her delay in getting to work. The Claimant has several prior disciplines for absenteeism including a three-day actual suspension (plus two days activated from a prior discipline) and disqualification as a Reservation Sales Agent. However, the Claimant's last discipline for absenteeism occurred more than two and one-half years prior to the absences giving rise to the present discipline. Under the circumstances, the assessment of a "final warning" is excessive. The Claimant appears to be improving her

behavior with respect to attendance, and there is no indication on this record that she will not continue to do so.

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 January, 2002.