

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36411  
Docket No. CL-37008  
03-3-01-3-631

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-12777) that:

1. The National Railroad Passenger Corporation, Northeast Corridor (NEC) violated the rules of the parties' Agreement made effective September 1, 1976 and revisions thereto, particularly Rules 2-B-1, 3-D-1, 7-A-1 and specifically the Separation Allowance Application provided pursuant to Article IV of the June 1, 1998 Agreement, when it accepted and authorized payment of separation allowance of \$35,000.00 to employee R. DePaoli, Relief Commissary Worker on February 17, 1999, then cancelled the payment of the separation allowance when it arbitrarily dismissed employee DePaoli from service on March 18, 1999.
2. In that the TCU Organization disputed the dismissal of employee DePaoli, and pursued the case to Special Board of Adjustment No. 973, which tribunal in rendering Award No. 602 returned employee DePaoli to service with seniority and rights unimpaired, the National Railroad Passenger Corporation (NEC) shall be required to pay employee DePaoli the approved separation allowance of \$35,000.00 he was entitled to prior to being arbitrarily held out of service.
3. This claim has been presented and progressed in accordance with the applicable rule of the parties' Agreement and should be allowed.”

**FINDING\$:**

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 June 1, 1998, the parties entered into an Agreement for TCU Commissary and Clerical employees in the New York Commissary location who were in active service and had a minimum of five years seniority to apply for separation allowances in exchange for terminating their relationship with Amtrak. Claimant Robert J. DePaoli applied for the separation allowance on February 17, 1999. The Claimant met the requirements and was qualified for a separation allowance of \$35,000.00. On February 27, 1999, the Claimant was involved in an accident while driving a catering truck. The accident and the Claimant's subsequent behavior resulted in his being charged on March 2, 1999. A Hearing in the matter was held soon after and the Claimant was dismissed from service on March 18, 1999. The Organization appealed this dismissal. The dismissal was denied at all levels and placed before Special Board of Adjustment No. 973 for final resolution. The Board returned the Claimant to service, but without pay for lost time. The Claimant was therefore suspended from March 18, 1999, to May 16, 2000, when he was returned to work as a result of Award 602 of Special Board of Adjustment No. 973. During the period that the Claimant was suspended from service, the Carrier acted on the applications for separation allowances of all qualified employees in active service. The Claimant was not in active service at the time the applications received final approval. The Carrier therefore did not award the Claimant a separation allowance.

The Board reviewed in detail the record before it. It considered the many arguments concerning the timeliness of various actions taken by the parties and the equity arguments presented by the Organization. In the final analysis, however, the Claimant, by his own actions, placed himself in a status that disqualified him from receiving the separation allowance. He had to be in active duty status when the allowance was approved and paid. He was not. He was in dismissed status, later changed to disciplinary suspension status. The Board has no basis to modify the Carrier's position in this instance.

#### AWARD

Claim denied.

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 17th day of March 2003.**