

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37027
Docket No. CL-37598
04-3-02-3-739

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
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(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12948) that:

1. Carrier acted arbitrarily, capriciously and in an unjust manner, in violation of Rule 24 of the current Amtrak/T.C.U. Agreement when by letter dated August 16, 2001 it assessed the discipline of a five (5) day actual suspension to Claimant, Mr. Sylvio Reyes as the result of a formal investigation held on August 7, 2001.
2. Should Claimant serve the suspension, Carrier shall compensate him for all lost time.
3. Carrier shall expunge all records of the discipline from Claimant's work 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.

On the day of the incident that triggered this case, Claimant Silvio Reyes was employed by the Carrier as a Ticket Agent in the Hollywood, Florida, Amtrak Station. On June 11, 2001, Marianne McClevey walked into the station and asked the Claimant for change to make a telephone call. It is alleged that the Claimant answered McClevey in a rude manner by declaring, "I am not a bank." The exchange promoted further discussion between the Claimant and McClevey. At some point, another employee became involved in the incident. Local Supervisors eventually were informed about the situation and had conversations with McClevey. McClevey supplied a written statement concerning the event and a tape recording of a conversation that she had with Supervisor Arbucias and Safety Engineer Silverman.

At the conclusion of the Carrier's investigation of the incident, the following letter was sent to the Claimant:

"NOTICE OF FORMAL INVESTIGATION"

File No. 01.329
July 24, 2001

Mr. Silvio Reyes
4410 East 30th Street, No. 1
Hialeah, Florida 33013

Dear Mr. Reyes:

Pursuant to notice of intent to impose discipline, you are hereby directed to appear for a formal investigation as indicated below:

Date: July 26, 2001

Time: 8:00 a.m.

Place: Amtrak Station
8303 N.W. 37th Avenue
Miami, Florida 33147

Specification: On June 12, 2001, you:

1. Were unprofessional by responding to Ms. Marianne McClevey, on two separate occasions, 'I am not a bank. . .' when she requested change from you to make a phone call due to an emergency

2. Were rude to Ms. Marianne McClevey by yelling while addressing her and by refusing to give her your supervisor's telephone number.

Charge: Violation of that part of the Professional and Personal Conduct section of the Amtrak Standards of Excellence that reads, 'Projecting a professional image is important in a customer-service business like ours. We make an impression by the way we . . . treat our customers and each other.'

Violation of that part of the Professional and Personal Conduct, that part which reads, 'On the Amtrak team, there is no place for activities or behaviors that compromise the safety, satisfaction, and well being of our customers, the public or our fellow employees. Therefore, boisterous conduct such as fighting, rudeness . . . is unacceptable. It is important to remain calm and be courteous to all customers, even those who may be difficult at times.'

You may, if you desire, arrange to be accompanied by a representative as provided in applicable schedule agreement without expense to the company.

All requests for postponement of this investigation must be handled through the Hearing Officer at 617-345-7669.

Sincerely,

D.C. Stokes
Service Manager

DCS:ja

cc: K. Teitrick
A. A. Arbucias - Please arrange for T. Home to appear as corporate witness
D. Silverman - Please arrange to attend as corporate witness"

The Hearing in the matter was held on August 7, 2001. As a result of that Hearing, the Claimant was found guilty as charged and assessed a five-day actual suspension. The discipline was challenged by the Organization. The claim was denied at each level of the grievance procedure and has been progressed to the Board for final resolution.

The Board reviewed the transcript of the Hearing and studied the parties' Submissions in detail. As a result of that review, the Board concluded that the Claimant was appropriately found to have acted in an unprofessional manner in his dealings with McClevey. The Board also finds that the assessment of a five-day actual suspension as a penalty for the Claimant's behavior is excessive. There were shortcomings in the Hearing process. Further, the Carrier's total reliance on the unchallenged statements of McClevey is questionable.

The Board is persuaded that the Carrier can make its point with the Claimant by inserting a stern admonishment in his record about his behavior and an explanation about the possible penalty if it is repeated. The Claimant is to be made whole for his loss of earnings.

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 18th day of May 2004.