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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37075
Docket No. CL-37793
04-3-03-3-121

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-12967)
that:

- (a) The Carrier acted in an arbitrary and capricious manner when on July 25, 2001 it removed and disqualified Dennis Martini from his position of Lead Crew Dispatcher at CNOC.
- (b) The Carrier violated Rules 6-A-1 of the Rules Agreement when a decision was not rendered until December 19, 2001 for an investigation held on September 6, 2001 thus violating the time limits of 15 calendar days of a decision being rendered after completion of the investigation.
- (c) Claimant D. Martini now be restored to his former position of Lead Crew Dispatcher, CNOC from which he was unjustly removed and now be compensated per Rule 7-B-1 for all loss of wages sustained by such removal on July 25th, 2001.”

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, the Claimant was assigned to a Lead Crew Dispatcher position at CNOC in Wilmington, Delaware. The Claimant was appointed as a Partially Excepted qualified Crew Dispatcher by General Manager M. Kate. Kate disqualified the Claimant as a Lead Crew Dispatcher on July 25, 2001. The Claimant requested an Unjust Treatment Hearing. It was held on September 6, 2001. The Carrier's Hearing Officer did not render a decision in the case until December 19, 2001. The Carrier's Hearing Officer was C. Hart, Inspector AMTRAK Police. As a result of the terrorist attack on the World Trade Center in New York City and the Pentagon in Washington, D.C., on September 11, 2001, Inspector Hart was immediately assigned to security work. This caused the excessive delay in the Carrier issuing a decision in the Claimant's Unjust Treatment Hearing. The Organization filed the instant claim contending that the time limits (15 days to render a decision) were violated and the claim should be allowed as submitted.

The Board reviewed the record as presented. As a result of that review, the Board concludes that the Carrier did not act in an inappropriate manner in this instance. At the outset of the grievance handling leading to this case, it was pointed out by the Carrier that the Claimant was in a PEP position and that Management has the sole discretion to disqualify and remove him from that position. The Board has no basis to conclude otherwise.

The Board also reviewed the time limit issue as presented. The Organization's argument on this point cannot change the outcome of the Carrier's decision in this instance.

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AWARD

Claim denied.

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 21st day of July 2004.