

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39129
Docket No. CL-39609
08-3-NRAB-00003-060471
(06-3-471)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 13153)
that:**

- (1) Carrier acting arbitrary, capricious and unjust manner violating Rule 19 and other related rules of the agreement, when by letter dated August 25, 2005, it assessed discipline of 'Dismissal from all Amtrak service effective immediately' against Claimant Randy G. Lewis.**
- (2) Carrier shall reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what he would have earned, including but not limited to daily wages, holiday pay and overtime had discipline not been assessed.**
- (3) Carrier shall now expunge the charges and discipline from Claimant's record.**
- (4) Carrier shall now be required to reimburse Claimant for any out-of-pocket medical, surgical and dental expenses to the extent that such payments would have been payable by the current insurance provided by the 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.

At the time of the incident leading to his discharge, Claimant R. Lewis was working as a Chef on Train 53. It is alleged that he entered passenger Brenda Petterson's sleeping room without permission. When Ms. Petterson exited her bathroom, the Claimant was standing in her room. Petterson was distraught and feared for her safety.

By letter dated August 11, 2005, the Carrier notified the Claimant that he was to attend a formal Investigation on August 17, 2005 to address the following charges and specifications:

“Charge I: . . . violation of Amtrak Standards of Excellence,
Attending to Duties

Charge II: . . . violation of Amtrak Standards of Excellence, Trust
and Honesty

Charge III: . . . violation of Amtrak Standards of Excellence,
Professional and Personal Conduct

Charge IV: . . . violation of Amtrak Standards of Excellence,
Professional and Personal Conduct. . . .

Specification: At approximately 9:00AM on August 8, 2005, while working as a Diner #6 Chef onboard Train #53(7), you entered Bedroom B, car 5341 without permission, violating the passenger's expectation of privacy and security. You were confronted by the passenger who occupied this room, who demanded you to leave the room immediately. Additionally, no permission was given to enter Bedroom B by any other employee or supervisor."

The Hearing took place on August 17, 2005 pursuant to which, in a letter dated August 25, 2005, the Claimant was notified that he was terminated effective immediately for violating Amtrak's Standards of Excellence.

By letter dated September 21, 2005, the Organization appealed the decision specifying that the Carrier did not meet its burden of proof and that the discipline assessed in the case was unwarranted and excessive. On January 31, 2006, Labor Relations Officer L. D. Miller denied the appeal. On April 4, 2006, the matter was appealed to the Third Division.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. The Organization contends that the burden of proof in a discipline matter such as this is on the Carrier; that burden of proof has not been met. The Organization claims that the Carrier has been arbitrary and capricious in its treatment of the Claimant, that the Carrier abused its discretion and that the Carrier's determination to discipline the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. The Claimant was merely walking from car to car when he noticed something out of place in Bedroom B. The Claimant was being cautious and had no intention to harm or threaten. The Organization asserts that the Carrier should now be required to overturn the dismissal and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it has met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. According to the Carrier, a review of the transcript developed during the Hearing makes it clear that the Claimant is guilty

as charged. Thus, the Claimant violated Amtrak's Standards of Excellence. Based on the instant offense, dismissal is the appropriate penalty.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325 and Third Division Award 16166)

The Board found substantial evidence in the record to sustain the Carrier's position in whole. We note that the Carrier has proven that the Claimant did violate Amtrak's Standards of Excellence. Based on the instant offense, we have determined that dismissal is an appropriate penalty.

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 7th day of July 2008.