

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39291
Docket No. CL-40007
08-3-NRAB-00003-070196
(07-3-196)

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-13177)
that:

- (1) Carrier acted arbitrarily and capriciously, violated Rule 24 of the governing agreement, when by letter dated June 5, 2006, it notified Claimant Eddie Jakes that he was addressed discipline of termination from the National Railroad Passenger Corporation.
- (2) Carrier shall now be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate him an amount equal to what he could have earned, including but not limited to, wages, holiday pay and overtime had he not been held from service and dismissed from service.
- (3) Carrier shall now expunge all references to the charges and discipline from the Claimant's record.
- (4) Carrier shall now be required to reimburse Claimant for any out-of-pocket medical, dental or surgical expenses to the extent that such payments would have been payable by the current

insurance provided by the Carrier under the terms of the governing Agreement.”

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 Eddie Jakes was assigned in the Management position of Station Operational Manager at the Chicago Union Station. On March 26, 2006, the Claimant allegedly fondled and threatened a passenger. Pursuant to an Investigation, the Claimant was terminated from his Management position effective April 22, 2006. The Claimant then bid back to his Agreement-covered Janitor position effective May 17, 2006. The Carrier immediately withheld the Claimant from service.

By letter dated May 19, 2006, the Carrier notified the Claimant that he was to attend a formal Investigation on May 26 to address the following charge and specification:

“Charge One: It is alleged that you failed to follow the “Professional and Personal Conduct” standard in Amtrak’s Standards of Excellence. . . .

Specification 1: In that while on duty on March 23, 2006, you inappropriately fondled passenger Taccarra D. McLaurin on train number 30 the Capital Limited.”

The Hearing took place on May 26, 2006 pursuant to which, in a letter dated June 5 the Claimant was notified that he was terminated effective immediately for violating Amtrak’s Standards of Excellence.

By letter dated June 23, 2006, the Organization appealed the decision specifying that the Carrier did not meet its burden of proof and that the discipline assessed was unwarranted and excessive. In addition, the Organization contends that the matter was procedurally flawed because the discipline was not imposed in a timely manner. On October 6, 2006, Director Labor Relations L. D. Miller denied the appeal. On April 3, 2007, the matter was appealed to the Board.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. It contends that the burden of proof in a discipline matter such as this is on the Carrier and that burden 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. In addition, the Organization claims that the discipline was not imposed in a timely manner. In the instant case, the discipline should have been imposed within 30 days, but was not so imposed. 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 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, as well as Third Division Award 16166.)

The Board finds substantial evidence in the record to uphold the Carrier's position in whole. The Carrier proved that the Claimant violated Amtrak's Standards of Excellence. As to the Organization's procedural argument, we acknowledge that while the Carrier was slightly untimely in initially imposing discipline, in the instant case, we find that this error was de minimis and not sufficient to overturn the discipline. Based on the instant offense, we have determined that dismissal is the 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 29th day of September 2008.