

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41468
Docket No. MS-41580
12-3-NRAB-00003-110164

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Jarron Bennett
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Jarron Bennett, the Claimant herein, feels he should be able to pay back dues and get back to work.”

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.

The underlying facts giving rise to this matter are not in dispute.

Petitioner Jarron Bennett was hired by the Carrier on January 14, 2008 as a Baggagehandler at Amtrak's Boston South Station. At all times relevant in this matter, the Petitioner was governed by a Collective Bargaining Agreement (CBA) between Amtrak and the Transportation Communications International Union (TCU or "Union"). Relevant to this matter, the CBA provides:

“[a]ll employees of the company now or hereafter subject to the rules and working conditions agreement between the parties shall, as a condition of their continued employment subject to such agreement, become members of the organization representing their craft or classes within 60 (sixty) calendar days of the date they first perform compensated service . . . and thereafter shall maintain membership in good standing. . . .”

The foregoing mandate requires the payment of Union dues as established by TCIU. The record reflects, and there is no dispute that the Petitioner was advised of the parties’ Agreement, as well as the foregoing Union Shop requirement.

The record reflects that on October 14, 2010, TCIU Representatives informed the Carrier that the Petitioner had not complied with the terms of the foregoing Union Shop Agreement inasmuch as he failed to pay any Union dues. The Carrier, pursuant to its obligation set forth in the CBA, promptly notified the Petitioner in writing that he had failed to comply with the terms of the Union Shop Agreement set forth above. The letter was sent to the Petitioner’s address of record. Appendix B of the CBA provides, in relevant part, that:

“Any employee so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall, within a period of ten calendar days from the date of such notice, request the Company in writing to accord him a hearing. Upon receipt of such request, the Company shall set a date for hearing which shall be held as soon as possible and within ten calendar days of the date of receipt of request therefor.”

The record reflects that the Petitioner made no such request for a hearing. As a result, the Petitioner’s employment was terminated on October 25, 2010 pursuant to the terms of the CBA.

On November 2, 2010, the Petitioner telephoned the Carrier’s Director of Labor Relations and noted that he had been terminated. During this conversation, the Petitioner maintained that he did not know about the notice and that he had not received his mail due to a “mix up at the post office.” In an effort to extend the Petitioner all rights to which he was entitled, and not knowing at that time whether the Petitioner’s statement regarding lack of mail was true or not, the Carrier extended the

Petitioner an opportunity for a hearing. The on-property Hearing was scheduled for November 8, 2010 and the Petitioner was so advised.

The November 8, 2010 on-property Hearing was conducted by telephone.¹ During this telephone conference, the Carrier learned, and the record reflects that:

- 1) The Petitioner began his employment with the Carrier on January 14, 2008;
- 2) The Petitioner had never paid any Union dues;
- 3) The Petitioner was aware of his obligation pursuant to the CBA to pay Union dues; and
- 4) The aforementioned letter advising the Petitioner of his failure to comply with the terms of the Union Shop Agreement had been sent to his correct address.

In light of the foregoing, by letter dated November 17, 2010, the Carrier informed the Petitioner that his appeal was denied. The Carrier based its decision on facts deduced at the November 8, 2010 on-property Hearing, together with the fact that the Carrier learned that the Petitioner had, in fact, refused delivery of the October 14, 2010 letter advising him of his termination as well as his right to a hearing. The matter is now before the Board for final and binding adjudication.

DISCUSSION & FINDINGS

By letter dated December 28, 2010, the Carrier advised the Petitioner that because he had failed to follow the appeal procedures set forth in Appendix B of the CBA, he had effectively waived his right to an appeal of his termination for the non-payment of Union dues. However, in the same letter, the Carrier also advised the Petitioner that while he had no further appeal rights under the terms of the CBA, he could, nevertheless, direct any questions to the National Railroad Adjustment Board (NRAB).

Appendix B of the CBA provides that the decision of the Carrier is final and binding unless appealed to a "neutral person to decide the dispute" within ten calendar days of said decision. The record is barren of any appeal by the Petitioner to the

¹ The record reflects that on this date, the Carrier's Labor Relations office received a notice from the U.S. Postal Service advising that the October 14, 2010 letter it sent to the Petitioner was stamped by the Postal Service as "REFUSED."

Carrier or TCIU seeking the appointment of a neutral, but the matter was appealed to the NRAB, no doubt due to the Carrier's suggestion to the Claimant. As a result, for all intents and purposes, and for the purpose of resolving this matter, the Board finds that such appeal, coupled with the Board's selection of the above-named neutral Referee, satisfies the requirements for an appeal as set forth in Section (c) of the CBA. In this regard, while Appendix B provides a clear procedure for appeal, aside from the proviso that either side "may" appeal to the National Mediation Board for the appointment of a neutral, there is no agency such as the American Arbitration Association or the Federal Mediation and Conciliation Services set forth in the CBA from which either party could request a slate of neutrals from which to choose. Accordingly, having found that the Board will assume jurisdiction over this matter under these very limited and unique circumstances, the sole issue for resolution is whether the Petitioner complied with his obligation pursuant to the Union Shop provision of the CBA.

By letter dated April 5, 2012, the Board advised the Petitioner of the date, time, and location of his Referee Hearing. Notwithstanding such notice, the Petitioner failed to report for the Referee Hearing, which was conducted before the Board in Washington, DC on May 17, 2012.

Based upon the totality of the record evidence, and given the undisputed fact that the Petitioner, particularly by his own admission, failed to pay Union dues, or the equivalent thereof, it is the Board's conclusion that the instant appeal must be denied.

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 13th day of December 2012.