

Public Law Board No. 4267

Award No. 25
Case No. 33
File No. AWSC-D-1878

Amtrak Service Workers Council

and

The National Railroad Passenger Corporation

Statement of Claim: Claim of the Amtrak Service Workers that:

1. That the National Railroad Passenger Corporation did violate Rule 19, (a) and (b) of the Controlling Agreement when Lucille Sheppard was unjustly suspended from service by notice of December 12, 1986 for a period of thirty (30) days, five (5) actual and twenty five (25) held in abeyance for six (6) months.

2. The National Railroad Passenger Corporation shall now be required to compensate Claimant for all time lost. The National Railroad Passenger Corporation shall also cleanse Claimant's service record of any reference to this discipline.

FINDINGS:

Claimant was a Train Attendant in the service of Carrier on June 9, 1988, when her conduct on that date led to an investigation in which she was charged with:

Your alleged violation of the National Railroad Passenger Corporation Rules of Conduct, and general rules for all service employees working on board reading in part:

Rule F.1 "All employees are required to conduct themselves in a courteous professional manner in dealing with public and other Amtrak

employees. Boisterous conduct or horseplay and profane or vulgar language are prohibited."

Rule J "Uniforms and Grooming-when required, employees on duty must wear uniforms and identification tags or badges in the manner prescribed.

General Rule #20 - Employees are forbidden to have friends or relatives in the same area as their work assignment or otherwise allow them to interfere with the performance of their duties.

SPECIFICATIONS

While assigned as train attendant on Train #27 on June 9, 1986:

1) You were sitting in the upper level of the lounge car in a double seat with a young woman with your vest unbuttoned and name tag off enroute at approximately 8:00 AM.

2) You were observed arguing with the TASC of the 2730 sleeper and District Supervisor P. Smith in view of passengers while in the lower level of the lounge car at approximately 8:20 AM.

3) You were fraternizing with your daughter while in a working status on board the train and she accompanied you on this run from CHI-PDX and return between the dates of 6/7/86-6/12/86.

Based on the information adduced at the investigation, the Investigating Officer found that the charges had been proved, and assessed Claimant a thirty (30) day suspension, five (5) days to be served and twenty five (25) days to be held in abeyance for six (6) months.

A Carrier Supervisor boarded the train at Vancouver, British Columbia and proceeded to the lounge car. She testified that she

observed Claimant sitting with a younger woman in the lounge car with her vest undone and without her name tag.

She also testified that she encountered a sleeper attendant who had been sent by the Lead Service Attendant to locate a missing breakfast. The Supervisor was in the lower section of the lounge car. She stated that she heard a loud commotion going on in the upper portion of the car. Upon hearing this noise she stated that she proceeded upstairs and told the employees making the noise, Claimant, the sleeper attendant and a Burlington Northern trainman, to be quiet and to come downstairs. She stated that the sleeper attendant admitted that he had stepped on Claimant's foot and that he apologized for this.

The sleeper attendant testified that he had accidentally stepped on the foot of Claimant. He said that he had removed his foot but continued to keep it above the foot of Claimant. He denied talking in a loud voice, but claimed that Claimant had done so. He testified that the Supervisor was downstairs and that no one had called them to go downstairs.

The Burlington Northern Trainman also testified. He stated that when he came upon the Claimant and the sleeper attendant, the attendant was standing on Claimant's foot. Only when he insisted that he remove his foot did the attendant so do. He denied that anyone was shouting or boisterous, although he admitted that the three of them were firm in their speech. He saw the complete incident as mismanagement on the part of the Supervisor.

Claimant testified that the sleeper attendant had found the missing breakfast in an empty room. It was established that the breakfast had been purchased by the Trainman who had put it in the room. She had retrieved it from the attendant and it was after this that he was standing on her foot. Claimant stated that the Supervisor would not listen to her side of the story and had not called the Conductor concerning the behavior of the attendant.

Claimant makes several procedural objections. The transcript has been edited in several places. When a party made an objection it was only stated that an objection was made and that it was responded to with a rebuttal. Rule 19 requires that a copy of the transcript be furnished to the Organization. It is not in the province of the Carrier to edit it. Full discussion of objections must be transcribed as made. An appellate board has no way of assessing the correctness of the position of the Investigating Officer if it does not have the benefit of the full testimony. Ordinarily this would be sufficient grounds for holding that the process cannot result in a fair and impartial review. However, a warning to the Carrier will suffice because the overrulings were against the Carrier except in one case in which the Organization was apparently sustained. In this case the lack of transcribing was harmless error.

Claimant also states that specification number three is so vague as to not provide sufficient information to allow a defense. With this we concur. The second portion of the specification is meaningless. The daughter had her own ticket and she "accompanied"

Claimant in the same manner as all the other passengers "accompanied" her. This is not the case of a small child, but of a college student. The first portion of the specification to be sufficient would need to state the approximate time and location. As it stands it could relate to the second part of the specification and be anytime within a six day period.

Claimant's representative wanted to submit into the record the transcript from the investigation of the Burlington Northern Trainman. This was refused by the Investigating Officer. However, the representative was allowed to read from the transcript and use relevant portions for the purpose of impeachment. Inconsistent statements made in another hearing are certainly capable of being used for impeachment purposes, but there was no need to submit the entire document into the record.

The testimony of the Supervisor was impeached in several ways. In the Burlington hearing the Supervisor testified that the employees involved in the commotion came downstairs to her. In this hearing she testified that she went upstairs and directed them to come below with her. The sleeper attendant and Claimant testified that they went to the Supervisor and were not called. The Supervisor testified that the commotion was in the presence of passengers. However, a Lead Service Attendant who was present stated that there were no passengers present.

Assuming *arguendo* that Claimant was involved in an altercation, the cause of it was not fully considered. The testimony of the sleeper attendant which disagreed with the testimony of the


Trainman and Claimant is not believable. To find that on a moving train he had stepped on Claimant's foot then moved his own foot but left it over the foot of Claimant does not comport with reality. It is understandable that an employee who has another employee standing on her foot would have something to say about it, probably in a loud voice.

Claimant admitted that her name tag was missing. She stated that she had lost it and had reported this. Nothing was introduced into evidence that would disprove this statement. She denied that her vest was unbuttoned and on this was corroborated by the sleeper attendant and the Trainman. It was established that her duties were over and that she was sitting in the lounge seat. Giving the credibility finding of the Investigation Officer full acknowledgment, we do not find that the incident was sufficient to warrant discipline.

We discount specification three and hold that the Carrier failed to prove specification one and two. Therefore, we find that the Carrier did not meet its burden of proof in this case.


Award:

Claim sustained.


W.O. Cole, Carrier Member

7/1/88


J. A. Leeb, Employee Member


T. Page Sharp, Chairman
and Neutral Referee

Gen. Chmn.	7/27/88
Claimant	7/29/88
Dist. Chmn.	7/27/88
Vice Gen. Chmn.	7/27/88
Emp. Member	7/27/88
Int'l. Pres.	7/29/88
ASLUC	7/29/88
Remed. Ct.	7/29/88