

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35451
Docket No. CL-35731
01-3-99-3-752**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12480) that:

- 1.) Amtrak acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when it rendered its decision to discipline the Claimant [Deverne Fleming Jr.] following a formal investigation.
- 2.) Carrier shall now expunge the discipline from Claimant’s record; compensate Claimant for all lost time, if any; and reinstate all seniority rights, benefit rights, and other employment privileges that may have been taken away as a result of this wrongful discipline.”

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.

In a letter dated August 4, 1998, the Claimant was directed to appear for a formal Investigation regarding the following charge:

“CHARGE 1: Violation of Amtrak’s Standards of Excellence, that part titled ATTENDING TO DUTIES, which reads in part:

‘It is also important for all of us to report to work on time and perform our duties during our assigned hours. Furthermore, some departments have established attendance requirements that apply specifically to employees at certain locations or in certain jobs.’

when you allegedly did not report for work on time and perform your duties during your assigned hours as follows:

- July 08, 1998: Arrived 4 hours 59 minutes late for start of assignment**
- July 22, 1998: Arrived 3 minutes late for start of assignment**
- July 25, 1998: Arrived SS minutes late for start of assignment”**

The Claimant was assessed the discipline of termination from service effective immediately, following a Hearing held on the aforementioned charge on August 26, 1998. The Organization appealed the decision in a letter dated October 3, 1998. This appeal was denied as were subsequent appeals.

It is the Carrier’s position that the finding of guilt and the discipline imposed was commensurate with the seriousness of the offenses in light of the Claimant’s short length of service, and his past record of having been disciplined for lateness. The Carrier contends that it has followed progressive discipline in regards to the Claimant who was afforded a fair and impartial Hearing, contrary to assertions of the Organization.

The Organization contends that the discipline assessed the Claimant is excessive in light of the reasons for the lateness. One incident of lateness was due to a vehicle emergency, for which the Claimant provided a witness testimony. A second incident of lateness, for which the Claimant also provided a document with the time of his whereabouts, occurred when the Claimant was delayed at a motor vehicle inspection

office. The third lateness was for three minutes, which the Organization contends would not have been recognized as late in other Carrier offices, thus the Organization alleges that the Carrier's application of the attendance policy is inconsistent. Additionally, the Organization alleges that the suppression of evidence of at the Hearing was unfair to the Claimant.

A careful review of the record indicates conflicting testimony. The Hearing testimony of Operations Manager Mike Nunemaker is, "One or two minute occurrences we do not process someone into a hearing, however, we do move them along within the prediscipline process. . . ." When asked, "They would not be charged for that?," Nunemaker responded "That's correct.. . three minute occurrence is where we start looking for an employee to charge, if it is an occurrence.. ." A second communication on lateness is in a memorandum in the record by Eugene Price regarding a "Revised Attendance Policy," which reads in pertinent part:

"Lateness of one minute or more is considered an occurrence and employees with three occurrences will be progressed. Charges, however, would not be brought against an employee unless the occurrences exceed 30 minutes during a calendar month. One unapproved absence and two occurrences of lateness would trigger the discipline policy . . ."

The language in the above excerpt from the Revised Attendance Policy dated December 19, 1997 Memorandum is clear, but the signature on Excessive Absenteeism Policy Acknowledgment of Receipt of this memo in the record is not consistent with four (4) other signatures of the Claimant found on other documents in the record. Further, in Hearing testimony the Claimant denies having signed this receipt, or having signed any documents that state three minutes as the time disciplinary action for lateness begins.

Regardless of whether or not one, two, or three minutes is considered a large enough occurrence to warrant disciplinary action by the Carrier, the Claimant provided three legitimate reasons for being late, at least one of which was likely to be out of his control. While the Claimant is not without culpability in this matter, the Board finds the discipline assessed excessive. Accordingly, the Board orders that the discipline be reduced and the Claimant be returned to work without backpay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of April, 2001.