

The Fourth Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

(The American Railway and Airway Supervisors Association:  
(A Division of TCU

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 19 when they assessed the discipline of dismissal to Mr. P. Poulakis, Foreman, following an investigation held in absentia on August 15, 1989. Said discipline being unjust, unwarranted and an abuse of Carrier's discretion.
2. As a result of this violative action, Carrier be required to return Mr. Poulakis to his position as Foreman with all rights and benefits unimpaired and compensate him for all lost wages.

FINDINGS:

The Fourth Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant was found responsible for violating Rules D, F-3 and K of the Amtrak Rules of Conduct, and assessed the penalty of dismissal.

Claimant allowed members of his gang to leave work early on May 29, 1989 but marked and signed their time cards for a full eight hours. His General Foreman testified at a Hearing held on August 15, 1989, that Claimant told him shortly thereafter: "There was nothing to do, so I let them go home." The Board finds that this testimony, as well as that of the members of the gang, clearly established the Claimant's guilt.

The Organization argues that Claimant was denied due process in that he was tried in absentia, after three postponements of the Hearing. At the completion of the Carrier's case at the Hearing, as Claimant's representative began reading two letters concerning his medical condition into the record, the transcript provided to the Board abruptly ends. Both letters were, however, included in the record as exhibits. The Organization argues that the Board was denied the opportunity to fully consider Claimant's medical condition, and cites several cases where claims were sustained because of the Carrier's failure to furnish a complete transcript.

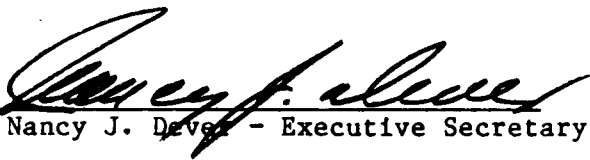
While these contentions were advanced with skill and vigor and are not without merit, the Organization nonetheless cannot overcome the long-standing precedent in this industry that when there is an admission of guilt there is no need for further proof and the only remaining question is the degree of discipline, if any. It is clear from the record that Claimant freely admitted his guilt and, given his past record, which includes one termination and a reinstatement, which the Carrier considered in reaching its dismissal determination, it cannot be said that the Carrier's disposition in this matter was an improper use of its discretion. The Claim, therefore, must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1991.