

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36947
Docket No. SG-37313
04-3-02-3-320

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Amtrak (AMTRAK):

Claim on behalf of J. F. Savage, for payment of any lost time and any reference to this matter removed from this personal record, Account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it imposed harsh and excessive discipline against the Claimant as a result of an investigation held on March 23, 2001, without meeting its burden of proving the charges. Carrier's File No. NEC-BRS(S)-SD-929D. General Chairman's File No. JY 321073-120026. BRS File Case No. 12019-NRPC-S."

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 Claimant is a Signal Maintainer who was directed to appear for a formal Investigation on charges that he engaged in discourteous, threatening, and unprofessional behavior toward Roadmaster McCabe on March 12, 2001 in violation of the Standards of Excellence and Workplace Violence Policy. The Investigation commenced on March 23, 2001 and was reconvened on March 29, 2001. Testimony was taken from Roadmaster McCabe, Amtrak Police Investigator J. Davis and the Claimant. The thrust of the allegation involves statements uttered by the Claimant to McCabe during a counseling session held on March 12, 2001 concerning a prior incident involving an alleged impropriety of the Claimant in response to a work assignment.

Roadmaster McCabe testified extensively concerning what was said by the Claimant during the counseling session and his demeanor, including the fact that the Claimant became boisterous, hostile and confrontational, calling him a "crack head" and "drug addict" and telling him that he was "going to get him" while pointing his finger at him, repeating this a number of times, indicating that he did not like McCabe, the matter was not over and he was not McCabe's friend. McCabe testified that he perceived the Claimant's activities as being a threat to his personal safety and that of his family and his approach to be very intimidating. McCabe immediately reported the incident to the Carrier's Police, initiated a Workplace Violence complaint, called his boss and left the property for the rest of the workday because he was so shaken up. The Claimant denied calling McCabe "crack head" or "drug addict," did not deny saying that he would get McCabe for this, but explained that it was not intended to be a threat of bodily harm. The Claimant testified that what he meant was that he would call to McCabe's Supervisors' attention the fact that he was working another job during the summer months on Fridays when he was supposed to be at work. The Claimant asserted that McCabe had harassed him because he bid to Abington Headquarters, and that McCabe had threatened him and used profanity towards him a number of times.

As a result of the Investigation, Hearing Officer Herz issued a lengthy decision, carefully analyzing all of the evidence and the credibility of the Claimant and McCabe, and found that the charges against the Claimant were sustained. Based upon the findings of the Hearing Officer, the Carrier issued the Claimant a

ten-day actual and a ten-day deferred suspension. It is this discipline that is protested by the instant claim.

The Carrier argues that there is substantial evidence in the record to support the charge that the Claimant threatened Roadmaster McCabe and acted unprofessionally in violation of the Standards of Excellence and zero tolerance Workplace Violence Policy, that the Hearing Officer's credibility resolutions and conclusions should be adopted by the Board because he was in the best position to determine which version of the events was more likely to have occurred, and that the penalty imposed was lenient under the circumstances and the Board should not substitute its judgment for that of the Carrier's, relying upon Special Board of Adjustment No. 1060, Award 52.

The Organization contends that the Carrier failed to sustain its burden of proving that the Claimant was guilty of the charges. It notes that the facts stem from a "he said, he said" one on one conversation, in which the Claimant denies calling McCabe either "crack head" or "drug addict" and explains that what he said about taking future action against McCabe was not in the form of a threat, but was letting him know that he would not continue to take his harassment while at the same time letting him get away with working a second job during work hours. The Organization asserts that this type of conflicting evidence does not meet the Carrier's substantial evidence burden of proof, relying on Third Division Awards 20766 and 33385; First Division Award 23870; Second Division Award 11626, in arguing that the claim should be sustained.

A careful review of the record convinces the Board that there is substantial evidence in the Investigation to support the Hearing Officer's conclusion that the Claimant was guilty of violating the Carrier's Standards of Excellence and Workplace Violence Policy. Not only does the Board have the benefit of the Hearing Officer's detailed account of the evidence he considered, but we also have the specific reasons why he chose to credit one version of the facts over the other based upon corroborating actions as well as the evidentiary basis for his specific credibility resolutions. The rationale for his findings are not only reasonable, but are firmly supported by the record. The Claimant was given a fair and impartial Hearing and there is no basis for overturning either the findings of the Hearing Officer or the

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**penalty imposed by the Carrier as a result of the Claimant's violations.
Accordingly, the claim 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 22nd day of March 2004.