

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39290
Docket No. CL-39784
08-3-NRAB-00003-060632
(06-3-632)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13164)
that:

- (1) Carrier acted in an arbitrary, capricious and unjust manner in violation of Article VI, paragraph (1) of the June 1, 1998 Mediation Agreement and other related rules, when by notice of January 9, 2004, it assessed discipline of ‘termination of your employment with the National Railroad Passenger Corporation in all capacities effective immediately,’ against Claimant Ron Williamson.
- (2) The Carrier violated Article VI, paragraph (1) of the June 1, 1998 Mediation Agreement when it removed Claimant from service on or about November 30, 2003.
- (3) Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what he could have earned, including but not limited to daily wages, holiday pay and overtime, had discipline not been assessed.
- (4) Carrier shall now expunge the charges and discipline from Claimant’s record.”

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.

At the time of the incident leading to his discharge, Claimant Ron Williamson was working as a Janitor in Chicago, Illinois. While conducting an Investigation into an unrelated matter, Dispute Resolution Officer Blanche Cook became aware of an allegation of sexual harassment on the Claimant's part toward Ms. Franchetta Derven. The Claimant and Derven are both janitorial employees with trash removal responsibilities. The Claimant was informed that he could take no action toward Derven in retaliation for her report of the alleged harassment. On November 30, 2003, the Claimant allegedly acted inappropriately by deliberately abandoning his tractor in front of a trash compactor, thus preventing Derven from accessing the compactor to dump her trash.

By letter dated December 19, 2003, the Carrier notified the Claimant that he was to attend a formal Investigation on December 24 to address the following charges and specifications:

"Specification One: On October 9, October 14 and October 27, Blanche B. Cook, Dispute Resolution Officer met with you and prohibited you from exhibiting or executing any retaliatory action against Amtrak employee Franchetta Derven. At that time, Ms. Cook informed you that Amtrak's Harassment policy prohibited any retaliatory action towards Ms. Derven. You were instructed by Ms. Cook 'to leave Ms. Derven alone.'

Specification Two: While assigned as a janitor, on November 24, 2003, it is alleged that you deliberately obstructed the path of Ms. Franchetta Derven while she tried to empty her trash into the trash compactor.

Specification Three: While assigned as a janitor, on November 30, 2003, it is alleged that you deliberately obstructed the path of Ms. Franchetta Derven while she tried to empty her trash into the trash compactor.

Charge 1: . . . failure to follow the Attending to Duties standard in Amtrak's Standards of Excellence. . . .

Charge 2: . . . failure to follow the Professional and Personal Conduct standard in Amtrak's Standards of Excellence. . . .

Charge 3: . . . failure to follow Amtrak's Harassment Policy. . . ."

The Hearing took place on December 31, 2003 pursuant to which, in a letter dated January 9, 2004, the Claimant was notified that he was terminated effective immediately for violating Amtrak's Standards of Excellence and Amtrak's Harassment Policy.

By letter dated January 21, 2004, the Organization appealed the decision specifying that the Carrier did not meet its burden of proof and that the discipline assessed was unwarranted and excessive. On March 16, 2006, Labor Relations Director L. D. Miller denied the appeal. However, in that letter, Miller offered the Claimant a Last Chance Agreement that was not accepted. On April 18, 2006, the matter was appealed to the Board.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh, and excessive. It contends that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. The Organization claims that the Carrier has been arbitrary and capricious in its treatment of the Claimant, that the Carrier abused its discretion and that its determination to discipline the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. The Organization asserts that the

Carrier should now be required to overturn the dismissal and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. According to the Carrier, a review of the transcript developed during the Hearing makes it clear that the Claimant is guilty as charged. Thus, the Claimant violated Amtrak's Standards of Excellence and Amtrak's Harassment Policy. Based on the instant offense, dismissal is the appropriate penalty.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, as well as Third Division Award 16166.)

The Board finds substantial evidence in the record to uphold the Carrier's position regarding the Claimant's actions. The Carrier proved that the Claimant violated Amtrak's Standards of Excellence and Amtrak's Harassment Policy. However, based upon the Claimant's long record of service, we believe that dismissal is too severe a penalty. Based on these factors, we are reinstating the Claimant to his position effective March 16, 2006. In addition, the Claimant shall be immediately subject to a Last Chance Order consistent with the letter of March 16, 2006. In the event that the Claimant engages in any further harassment, he shall be subject to immediate dismissal.

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 29th day of September 2008.