

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41286
Docket No. MW-41516
12-3-NRAB-00003-110134**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(New Orleans Public Belt Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (suspended from service on May 14, 2010 and subsequent dismissal by letter dated June 2, 2010) imposed upon Mr. D. Phillips for alleged violation of General Code of Operating Rules, Rule 1.6 Conduct and General Order Number 376, New Orleans Public Belt Policy Regarding Prevention of Violence in the Workplace was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File NOPB-510-JF-10).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Phillips shall now have the discipline stricken from his record and he shall be reinstated to service with all seniority and rights unimpaired and compensated at his respective and applicable rates of pay for all straight time and overtime hours lost as a result of the aforesaid 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.

The Claimant was first employed by the Carrier in the Bridge Sub-Department of the Engineering Department at New Orleans, Louisiana, on May 27, 2002. As a Bridgeman, the Claimant worked with gangs of various sizes to perform repair and maintenance work on the Huey P. Long Bridge.

On May 6, 2010, one of the Claimant's co-workers reported to management that the Claimant had been harassing and intimidating him. Specifically, he reported that the Claimant had taken pictures of him and another employee when they were leaning against the guard rails on the bridge during their break. According to the employee, the Claimant told them that he intended to show the pictures to management to portray them as not doing their jobs. The following day, seven other employees presented written statements describing recent and/or long-term intimidation or harassment by the Claimant. Two of these statements described threats of violence by the Claimant. Several of these employees provided supplemental statements on May 12, 2010.

On May 13, 2010, the Carrier issued the Claimant a Notice of Investigation, charging him with "alleged violation of General Code of Operating Rules, Rule 1.6 Conduct, and General Order No. 376, NOPB Policy Regarding Prevention of Violence in the Workplace, while you were working as Bridgeman. The New Orleans Public Belt Railroad was notified and received several formal complaints on Friday, May 7, 2010." The Investigation was conducted on May 25, 2010 and

took almost nine hours to complete. Following the Investigation, the Claimant was dismissed from service effective June 2, 2010.

The Board reviewed the Investigation transcript and finds that the Claimant engaged in a pattern of harassment and intimidation against his fellow employees. This was the conclusion of the Hearing Officer; the Board will overturn such a decision only upon a finding that it was unreasonable and not based upon substantial evidence. We can make no such finding in this case. There was ample evidence and testimony that the Claimant was guilty of such conduct. It is evident that this has been a continuing problem and the Carrier had counseled the Claimant about his behavior on several occasions. He had been given a formal warning to stop harassing a co-worker and had been referred to the Employee Assistance Program for anger management counseling. Apparently, all of these efforts were to no avail. Under the circumstances, the Board finds that the Carrier had no alternative but to terminate the Claimant's employment. The Carrier has a duty to protect its employees from this type of conduct. The Claimant's dismissal was not in violation of the Agreement.

In reaching this conclusion, the Board considered the various arguments raised by the Organization and found them to be unpersuasive in this case.

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 28th day of March 2012.