

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41744  
Docket No. MW-41809  
13-3-NRAB-00003-120092**

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

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (removed and barred from performing service for Amtrak on the Caltrain property) imposed upon Mr. J. Ghazali on September 10, 2010 was unwarranted and in violation of the Agreement (System File L-1015A-451/BMWE-562 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Ghazali shall now ‘. . . be immediately reinstated to service and compensated for any and all wages lost, straight time and overtime, beginning with the day he was removed from service, September 10, 2010 and ending with his reinstatement to service.’ and ‘. . . be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the National Railroad Passenger Corporation and a member of the Brotherhood of**

**Maintenance of Way Employees Division of the International  
Brotherhood of Teamsters.”**

**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 an Inspector & Repair Foreman working for the Carrier under its contract with Peninsula Commuter Service (Caltrain) to maintain its track and structures. As a result of a June 30, 2010 collision that the Claimant was involved in while driving a company vehicle without authorization when he was off duty, causing significant damage, and leaving the scene of the accident without exchanging necessary information, the Claimant was removed from service and the Carrier offered, and the Claimant accepted, a waiver in lieu of a disciplinary Hearing. The Claimant was assessed a 15-day suspension (with an additional 15-day suspension held in abeyance), which he served in July 2010. On September 10, 2010 the Carrier received a letter from Caltrain's Director of Rail Transportation exercising its right to bar an employee from performance of service on its property for cause, and insisting that the Claimant be removed from work on its property due to his June 30 accident. The Claimant was furloughed because he could not exercise his seniority rights on Caltrain property, and he did not accept work offered elsewhere on the Carrier's property, which would have involved relocating more than 2,000 miles away from his home without a moving allowance or other associated benefits.

The Organization argues that the Carrier removed the Claimant from service in violation of the Agreement and violated the waiver signed on July 13, 2010, which fully and finally settled the incident for which he was later improperly assessed removal from service, citing Third Division Award 31538 and Public Law Board No. 6159, Award 29. It asserts that the Carrier must comply with its Collective Bargaining Agreement, regardless of the terms of its contract with Caltrain, to which the Organization is not a party, relying on First Division Award 20172; Public Law Board No. 1911, Award 12; and Public Law Board No. 912, Award 472.. The Organization avers that none of the terms and conditions of the Carrier's contract with Caltrain was the subject of negotiations between it and the Carrier, so they cannot be used to defeat the Claimant's rights to a fair and impartial Hearing or compliance with the disciplinary process contained in Rule 15. Because the Carrier no longer operates Caltrain's property, the Organization seeks damages in lieu of reinstatement and the opportunity to relocate with full benefits and New York Dock protection.

The Carrier contends that it did not remove the Claimant from service, but only from Caltrain's property, after it received a written request to do so under the terms of its contract with Caltrain, which it was required to honor. It asserts that the Claimant was furloughed when there were no positions within his seniority district available for him to exercise his seniority, and only after it had identified alternate employment at other locations that the Claimant could apply for, which he chose not to do. The Carrier argues that it has no obligation under the terms of the parties' Agreement to provide a moving allowance or home buy-back benefits to the Claimant in this situation, and notes that the Claimant was subject to the provisions of its contract with Caltrain when he was performing service on that property. It further avers that it has no authority to modify the actions of host railroads, citing Public Law Board No. 7035, Award 6; Special Board of Adjustment No. 928, Awards 146, 176 & 227, and contends that the Organization failed to meet its burden of proving that the Carrier further disciplined the Claimant for the incident for which he accepted a waiver.

A careful review of the on-property record evidence convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement. While it is true that the Carrier assessed discipline to the Claimant on the basis of his June 30, 2010 car accident by way of the waiver he signed accepting the

suspension in July, the Board finds that the Carrier's removal of the Claimant from Caltrain's property as a result of Caltrain's September request pursuant to the terms of its contract with the Carrier was not additional discipline assessed by the Carrier in violation of the Agreement between the parties. The Board understands why the Claimant may have seen it that way, because the effect of Caltrain's insistence that the Claimant no longer be permitted on its property was for him to be furloughed (inasmuch as this was apparently the only contract the Carrier had within the Claimant's seniority district) unlike the situation in Public Law Board No. 912, Award 472. See, Public Law Board No. 928, Award 176. However, the Claimant was offered the opportunity to remain employed by the Carrier on another property, albeit at a distant location, which he rejected at his peril. Once the Claimant could no longer work on Caltrain property, he was not qualified to perform his job, and the Carrier was within its rights to remove him from that position. See, Public Law Board No. 7035, Case 6; Special Board of Adjustment No. 928, Award 146. The Claimant was afforded the opportunity to exercise the same contractual rights as other affected employees upon the termination of the Carrier's contract with Caltrain, because he was on furlough status, and not terminated from the Carrier's service. Because he chose not to accept alternate employment with the Carrier, either at the time of his removal from Caltrain property, or upon the termination of the Carrier's Caltrain contract, he is not entitled to the damages sought by this claim.

**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 30th day of September 2013.