

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42069  
Docket No. MW-42252  
15-3-NRAB-00003-130238**

**The Third Division consisted of the regular members and in addition Referee Michael Capone 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 (dismissal) imposed upon Mr. J. Discola by letter dated November 6, 2012 was excessive and in violation of the Agreement (Carrier’s File NEC-BMWE-SD-5105D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant J. Discola shall be allowed to return to work with all rights and benefits fully restored and he shall be compensated in accordance with the provisions of Rule 74(c)(1).”**

**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 employed as a “B&B” Mechanic on the New England Division when he was dismissed from service on November 7 after an Investigation held on October 25, 2012 for violating the Carrier’s Standards of Excellence governing Trust and Honesty, Attending to Duties, Professional and Personal Conduct, Discrimination, and Workplace Violence Policy, Sections 5.0, 5.1, 5.2, 5.4 and 5.7, as well as its Anti-Discrimination and Anti-Harassment Policy, Section 4.2 (Harassment), as a result of his conduct unbecoming of an employee on September 20, 2012, as well as other occurrences established during the Investigation.

In discipline cases, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of its discretion. The Board carefully reviewed the evidence and testimony and finds that there is substantial evidence in the record establishing that the Claimant engaged in rude and inappropriate behavior towards his Foreman and other employees. It is uncontested that on September 20, 2012 he placed a sanitary napkin in his Foreman’s lunchbox, resulting in a demeaning and insubordinate encounter in the presence of other employees. In addition, the record also confirms that the Claimant made a vulgar and profane statement directed at two Foremen who were discussing the “rule of the day.” The Claimant exclaimed, “F\*\*\* you . . . that’s the rule of the day.” During the Investigation, it was also revealed and uncontroverted that the Claimant had engaged in a pattern of inappropriate behavior including racial slurs, unsafe work habits, and a pattern of disrespect toward fellow employees.

The Claimant admitted his unacceptable behavior and asks for leniency. The Organization makes a valiant effort and argues that the Claimant knows his behavior was improper and would seek counseling to alter his misconduct so as to become a productive employee.

The Board finds that the Claimant violated the Carrier’s Rules and Policies with inexcusable and disruptive conduct. He is a short-term employee with two and one – half years of service. During this short time, he has repeatedly engaged in improper behavior, which is well documented in the record.

Once the Board has determined that there is substantial evidence in the record to support the charges, we must decide if the discipline imposed is

unreasonable, arbitrary, or capricious. Given the nature of the offenses with which the Claimant was charged and the short duration of his employment, we find no basis here to conclude that his termination was either excessive or arbitrary. Leniency requests are reserved to the Carrier's discretion. Accordingly, the Board has no basis to modify the Carrier's determination to dismiss the Claimant.

**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 19th day of March 2015.