

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42794
Docket No. MW-42624
17-3-NRAB-00003-140309**

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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 [ten (10) day suspension] imposed on Mr. D. Cerrito by letter dated June 17, 2013 in connection with allegations that he was insubordinate and failed to follow instructions on February 11, 2013 at approximately 12:00 P.M. was without just and sufficient cause, unwarranted and in violation of the Agreement (Carrier's File NEC-BMWE-SD-5197D).

(2) As a consequence of the Carrier's violation referred to in Part (1) above, the Carrier must remove the discipline from Mr. Cerrito's record and compensate him for all wage loss suffered as a result of the Carrier's unjust and improper 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.

Claimant David Cerrito has established and held seniority with the Carrier's Bridge and Building (B&B) Subdepartment and has over 17 years of service with the Carrier at the time of the incident giving rise to this dispute. The instant dispute involves a 10 days' suspension assessed New England Division B&B Foreman David Cerrito for his alleged failure to follow instructions in violation of Amtrak's Standards of Excellence involving Professional and Personal Conduct (Teamwork) when he refused the job assignment to clear snow off switches leading to Springfield Station from the B&A Railroad side on February 11, 2013.

Hearing Officer Deborah Gaines found in her Decision dated June 17, 2013, that the Appellant was not guilty of the Carrier's charge of insubordination in violation of the Standards of Excellence involving Attending to Duties wherein she noted as follows:

"8. Based upon the above, I find that your initial refusal to be inappropriate. However, I find that you did call your supervisor within a sufficiently small window of time to cure your initial insubordination and therefore, find that the Carrier failed to prove you were wholly insubordinate. Thus, the Carrier has proven that you violated the teamwork portion of the standards of excellence by initially refusing the assignment under the conditions that existed. However, since you attempted to cure the situation within minutes of your initial refusal, I do not find you violated the Standards of Excellence pertaining to Attending to Duties and ultimately were not insubordinate."

On the same date as Gaines' decision noted above, the Carrier issued the Claimant a 10 day suspension. By letter dated June 2, 2013, the Organization filed a timely appeal to the Carrier's decision to issue discipline by letter dated June 2, 2013 maintaining that the Carrier failed to meet its burden of proof that the Claimant was insubordinate. On or about August 2, 2013, the Carrier denied the Organization's appeal. While acknowledging that the Claimant was not

insubordinate as a result of the Gaines decision the Carrier maintained that the Claimant was none-the-less in violation of Carrier rules, noting in relevant part:

“While there was insufficient support for the charge of insubordination, substantive evidence was presented at trial proving that the Appellant violated the *Standards of Excellence Policy* by initially refusing the assignment under the conditions that existed.’ In fact, the Appellant clearly admitted in his own testimony that he was directed to check and/or clean the switches, while he was still on straight time during his regular tour of duty, which he refused to do. ***” (Emphasis in original)

The matter was then handled through the usual manner up to and including conference on October 1, 2013. The parties were unable to reach a resolution.

As noted above, the Carrier has assessed the Claimant a 10 day suspension as a result of his failure to follow instructions on February 11, 2013. Following a careful review of Hearing Officer Gaines’ decision holding that the Claimant was not guilty of insubordination, and for the reasons noted and discussed below, the Board cannot find that the Claimant was guilty of the charge of failing to follow instructions.

We begin with the basic definition of “insubordination.” Simply defined, insubordination is the refusal by an employee to work or obey a directive given by the employee’s supervisor. Respectfully, this definition is substantially similar to the charge at issue in this proceeding. While not minimizing the Claimant’s action on June 17, 2013, the Board cannot find that the Claimant is guilty as charged since to do so would constitute double jeopardy. However, whereas Hearing Officer Gaines found that the Claimant, by his actions violated the Carrier’s Standards of Excellence, Professional and Personal Conduct, Teamwork wherein she noted: “Thus, the Carrier has proven that you violated the teamwork portion of the standards of excellence by initially refusing the assignment under the conditions that existed” – the Board finds that a Letter of Reprimand represents an appropriate response to the Claimant’s actions. Accordingly, the 10-day suspension shall be changed to a Letter of Reprimand.

Claim sustained in part and denied in part as noted and discussed above.

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 28th day of November 2017.