

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43065  
Docket No. MW-43988  
18-3-NRAB-00003-170047**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (Amtrak) -  
(Northeast Corridor**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (termination) imposed on Mr. E. Mergaman, by letter dated June 3, 2016, for allegedly walking away from his watchman duties and returning to his equipment was exceedingly harsh, without just cause and in violation of the Agreement (System File SEC-BMWE-SD-5431D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier must remove the discipline from Claimant E. Mergaman’s record, reinstate him to service and compensate him for all time lost.”**

**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.

By notice dated April 27, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that the Claimant allegedly had violated Carrier rules in connection with an April 7, 2016, incident in which the Claimant allegedly had abandoned his watchman duties before he properly was relieved. The Investigation was conducted, after a postponement, on May 23, 2016. By letter dated June 3, 2016, the Claimant was informed that he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was afforded a fair and impartial Investigation, because substantial evidence establishes that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, because the requested remedy is inappropriate, and because the discipline imposed was commensurate with the proven offense and was not arbitrary, capricious, or excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to show that the circumstances require the Claimant's dismissal; because the record shows that, at most, a purely technical violation of the rules occurred; and because the discipline imposed was arbitrary, capricious, and unwarranted.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of abandoning his watchman duties before he was relieved in violation of the Carrier's Cardinal Rules and Rule 329. It is clear that once the Claimant was assigned as a watchman, he was to perform those duties until he was properly relieved. The Claimant admitted that he left before any relief arrived. His excuse was that he believed that the equipment repair had been completed and the repairmen had cleared the tracks, but the Claimant also admitted that no one told him that the repairmen were done before he left. The Claimant was clearly in

violation of the Carrier's Standards of Excellence and subjected himself to disciplinary action.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case clearly disregarded several very important safety rules. The Claimant's actions jeopardized the safety of other employees. The Boards have upheld dismissal of employees who abandon their duties. (See SBA 279-Award 953, and PLB 6721-Award 108.)

Since the Claimant admittedly committed this serious offense, the Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, this claim must be denied.

**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 2nd day of May 2018.