

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43066
Docket No. MW-44050
18-3-NRAB-00003-170143**

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 (dismissal) imposed upon Mr. K. Hicks by letter dated August 18, 2016 was arbitrary, unwarranted, excessive and in violation of the Agreement (System File NEC-BMWE-SD-5443D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant K. Hicks shall be reinstated to service immediately with full seniority unimpaired and made whole for all lost wages, including overtime and benefits resulting from his improper termination.”**

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 July 12, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that the Claimant allegedly had violated Carrier's Standards of Excellence in connection with a July 6, 2016, incident in which the Claimant allegedly had cheated on a required examination. The Investigation was conducted, after a postponement, on August 11, 2016. By letter dated August 18, 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 or mitigating value 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 meet its burden of proof, 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 cheating on a test when he was observed with the test answers written on his hand while he was sitting for a Roadway Worker Protection Test. The Claimant did admit that he had writing on his hand but denied that he had the answers on his hand. Moreover, Senior Technical Trainer Kim Matthews testified that she was administering the test and noticed that the Claimant's hands had "A, B, C, D" in a sequential order on his left hand. Another witness also observed the writing on the Claimant's hand. The Claimant's action constituted dishonesty.

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.

In addition to the Carrier rule that prohibits cheating on an exam, it is fundamental that dishonesty is a dismissible offense, even on the first occasion. Given the Claimant's relative short seniority and the serious offense of dishonesty of which the Claimant was properly found guilty, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. 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.