

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43067
Docket No. MW-44091
18-3-NRAB-00003-170186**

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. R. Calhoun by letter dated August 15, 2016 was excessive and in violation of the Agreement (System File NEC-BMWE-SD-5441D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant R. Calhoun shall be reinstated to service immediately with full seniority unimpaired and made whole for all lost wages 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 June 29, 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 June 16, 2016, incident in which a burro crane being operated by the Claimant allegedly came into contact with overhead electrical wires, causing them to fall onto a portion of track. The Investigation was conducted, after a postponement, on August 3, 2016. By letter dated August 15, 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, 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, because the Carrier has not demonstrated that the totality of circumstances required the Claimant's dismissal, 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 violating the Carrier's Standards of Excellence, including numerous rules, when he failed to properly lower the boom on his Burro Crane that he was lifting from the Shop Lead Track to the No. 5 Yard Track in Philadelphia. The Burro Crane boom came into contact with overhead electrical wires and caused damage. The record also is clear that the Claimant failed to perform an on-track required safety briefing before he made the move. Although the Claimant did not testify at the hearing, in his closing statement, the Claimant stated:

“. . . so I lowered it down, and I thought I had it low enough. Evidently, I didn't cuz I struck the wires . . . I mis-measured it. That's what happened that night.”

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.

Although the Claimant had a great deal of seniority with the Carrier, the Claimant's record reveals that he has had numerous accidents involving violations of safety rules which resulted in a great deal of discipline prior to the incident at issue. The record reveals a five-day suspension, a thirty-day suspension, a reprimand, and a fifteen-day suspension with fifteen deferred. All of them involved violations of safety rules. Given that previous disciplinary background, coupled with this most recent incident, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it decided to terminate the Claimant. 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.