

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43071
Docket No. MW-44186
18-3-NRAB-00003-170275**

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. J. Hurd, Jr. was arbitrary, capricious, excessive, on the basis of unproven charges and in violation of the Agreement (Carrier’s File BMW-600D NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hurd, Jr. shall be ‘. . . restored to service, with any and all lost wages, beginning with the date Claimant was released by his physician to return to work and restored any benefits lost to him, while he was unnecessarily held from service. Furthermore, we request Mr. Hurd’s record be expunged of the charges. ***”**

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 February 1, 2016, and corrected on February 2, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that the Claimant allegedly had violated Carrier's rules when he allegedly failed to conduct a proper job briefing on January 28, 2016. The Investigation was conducted, after three postponements, on July 14, 2016. By letter dated July 21, 2016, the Claimant was informed that he had been found guilty of violating Carrier rules, and on July 22, 2016, the Claimant was notified 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 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 did not meet its burden of proof and because the discipline imposed was inappropriate.

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 failing to follow Carrier rules when he had been assigned to inspect track between Marshall and Jackson and failed to perform a proper job briefing identifying the hazards that were present within that work authority. The Claimant's actions violated Carrier Operating Rules 1 and 703, among others. The record is clear that the Claimant did not conduct a job briefing on that date. The Claimant did not testify at the hearing, and the Organization did not call any witnesses or submit any documents to rebut the Carrier's case.

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's previous disciplinary record shows a reprimand, a five-day suspension, a thirty-day suspension, a fifteen-day suspension with another fifteen deferred. Given the Claimant's previous disciplinary background, coupled with his relatively short term of service and the seriousness of this current offense of which he 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.