

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43072
Docket No. MW-44276
18-3-NRAB-00003-160564**

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. S. Nolke by letter dated February 8, 2016 was arbitrary, capricious, excessive, on the basis of unproven charges and in violation of the Agreement (Carrier’s File 16-019 NRP).**
- (2) The claim shall be allowed as presented because it was not denied by Senior Manager – Labor Relations Sharon Jindal within thirty (30) calendar days of the conference held on February 29, 2016 in accordance with Rule 15 of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant S. Nolke shall be reinstated to service ‘. . . compensating him for all lost wages, restoring all rights and benefits, expunging his work record and otherwise make him whole.”**

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 January 25, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that the Claimant allegedly violated the Carrier's Workplace Violence Policy and its Standards of Excellence when the Claimant allegedly punched and choked a co-worker on January 21, 2016. The Investigation was conducted, as scheduled, on February 1, 2016. By letter dated February 6, 2016, the Claimant was informed that he had been found guilty as charged, and on February 8, 2016, the Claimant was notified that he was being dismissed from the Carrier's service. The Organization then 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 hearing, because substantial evidence proves that the Claimant is guilty as charged, because there is no merit to the Organization's arguments, and because the discipline imposed was warranted and commensurate with the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to respond to this claim within thirty calendar days of the conference, because the Carrier failed to afford the Claimant a fair and impartial Investigation, because the Carrier failed to meet its burden of proof, and because the discipline imposed was arbitrary, excessive, and in violation of the Agreement.

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

The Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

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 workplace violence policy when he punched and choked a fellow employee. The Claimant admits that he hit the other employee in the shoulder. The Claimant also admits that he put his arms on the other employee to "hold him." He only denies that he was squeezing the victim's throat. However, it is clear that an altercation took place. The victim of the assault stated that he felt uncomfortable and unsafe during the encounter that went on for approximately one minute.

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 Carrier has zero tolerance for threats and acts of violence. The Claimant clearly physically threatened another employee in this situation. Given the Carrier's policy and the seriousness of this offense, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated this Claimant for his violent actions. 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.