

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43074
Docket No. MW-44278
18-3-NRAB-00003-170021**

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. G. Castillo by letter dated April 12, 2016 for alleged failure to provide roadway worker protection while working in the foul of T-2 Track within the 14th Street Coach Yard was without just and sufficient cause and in violation of the Agreement (System File BMW-597D NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier must clear Claimant G. Castillo’s record of the charges, 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 March 17, 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 a March 16, 2016, incident in which the Claimant allegedly had failed to provide roadway worker protection while working in the foul of T-2 Track within the Chicago 14th Street Coach Yard. The Investigation was conducted, after a postponement, on April 6, 2016. By letter dated April 11, 2016, the Claimant was informed that he had been found guilty as charged, and on April 12, 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 and the Claimant's admissions establish that the Claimant is guilty as charged, because the Claimant was afforded a fair and impartial Investigation, and because the discipline imposed was commensurate with the seriousness of the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the discipline imposed was impermissibly disproportionate to the alleged offense, because the discipline imposed does not comply with the Carrier's progressive discipline policy, because the discipline does not satisfy the principles of just cause, and because the Organization's request for leniency was improperly denied.

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 Carrier rules, including its Cardinal Rules, when he failed to provide any type of protection while working on the foul of T-2 Track within the Chicago 14th Street Coach Yard. The Carrier presented five witnesses as well as video evidence that corroborated the testimony of the written statements of the witnesses that showed that the Claimant added no protection as he was required to do under RWP Manual Rule 327. Although the Claimant stated that he "didn't need protection because he was not fouling tracks," he later admitted that he had "made a mistake." He also stated in his closing statement the following:

“... we’ve owned up to our mistake, and, you know, just getting ready to deal with the consequences of it.”

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 record shows that the Claimant, prior to this incident, had been disciplined on four separate occasions between 2006 and 2013 for attendance matters and workplace violence/unprofessional conduct. Given that previous disciplinary background, plus the seriousness of the offense here, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it determined that it should terminate the Claimant for this latest serious offense. 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.