

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43075
Docket No. MW-44279
18-3-NRAB-00003-170299**

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. D. McCoy by letter dated August 29, 2016 was arbitrary, unwarranted, excessive and in violation of the Agreement (System File NEC-BMWE-SD-5453D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant D. McCoy shall be reinstated to service immediately with full seniority unimpaired and compensated 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 August 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 and rules in connection with a July 28, 2016, incident in which the Claimant allegedly tampered with a safety device. The Investigation was conducted, as scheduled, on August 24, 2016. By letter dated September 1, 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, because the Carrier has not demonstrated that just cause was served by the Claimant's dismissal, because the Carrier has not demonstrated that the totality of the circumstances required the Claimant's dismissal, and because the discipline imposed was arbitrary, unwarranted, excessive and in violation of the Agreement.

The parties being unable to resolve their dispute, this matter came before this 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 deliberately tampering with an Amtrak vehicle camera by placing a piece of tape over the lens of the DriveCam camera located in the Amtrak vehicle that had been assigned to him. The Claimant's action violated Amtrak's Cardinal Rule No. 1 that prohibits "any unauthorized tampering with or disabling of an approved safety device."

There was a video of the Claimant eating lunch and taking a piece of tape and placing it over the lens of the camera. Obviously, the Claimant did not have authority or permission to place the tape on the camera lens. Although the Claimant did not testify at the hearing, he stated in his closing statement the following:

"I'm regretfully sorry for my actions on July 28, 2016 . . . I was not aware that the cameras that were installed in the trucks were considered safety devices, which, in turn, this was told to me that it was a Cardinal Rule. I did not know that. Nevertheless, it's no excuse . . . I understand a price has to be paid."

The Claimant's above closing statement was an admission of the wrongdoing.

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 in this case was found guilty of a very serious incident of wrongdoing. He deliberately placed the tape on the camera lens and admitted his misconduct. Given the seriousness of this offense, this 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.

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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.