

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43352
Docket No. SG-44497
19-3-NRAB-00003-170667**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Northeastern Illinois Regional Commuter
(Railroad Corporation (NIRC/Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (METRA):

Claim on behalf of S.R. Decker, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53 when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 10, 2016. Carrier’s File No. 11-7-982. General Chairman’s File No. 18-D-16. BRS File Case No. 15720-NIRC.”

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 6, 2016, the Claimant was directed to attend a formal Investigation and hearing on charges that he allegedly had engaged in an altercation with a co-worker on June 6, 2016. The Investigation was conducted, as scheduled, on June 10, 2016. By letter dated June 17, 2016, the Claimant was informed that as a result of the Investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization subsequently 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 received a fair and impartial hearing, because substantial evidence establishes that the Claimant was guilty as charged, and because the discipline imposed was not harsh, arbitrary, or an abuse of discretion, but was commensurate with the proven violation and the Claimant's discipline record. The Organization contends that the instant claim should be sustained in its entirety because the Carrier committed procedural violations that denied the Claimant his right to a fair and impartial Investigation, because the Carrier failed to meet its burden of proof, because the Carrier subjected the Claimant to disparately harsh treatment, and because the discipline imposed was arbitrary and excessive.

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 Employee Conduct Rule N when he engaged in an altercation with a co-worker in the Blue Island Yard on June 6, 2016. That verbal

altercation became a physical altercation, even though the other party had already walked away from the incident. The other party tried to de-escalate the matter, and the Claimant continued with the altercation. The police were subsequently called as a result of the incident. The Claimant's behavior clearly violated the Carrier's rules.

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 had only two years of service with the Carrier. Given the seriousness of this incident involving workplace violence, the Board cannot find that the Carrier's action in terminating the Claimant for this serious violation was unreasonable, arbitrary, or capricious. 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 14th day of December 2018.