

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43605  
Docket No. MW-44466  
19-3-NRAB-00003-170590**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. M. Bill by letter dated December 7, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File NEC-BMWE-SD-5488D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the aforesaid dismissal decision and Claimant M. Bill shall be reinstated to service immediately with full seniority unimpaired and made whole 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.

The Carrier has employed the Claimant, Michael Bill, for approximately seven years, who held the position of Trackman when he was dismissed from service. On November 18, 2016, the Claimant was charged with violating the Carrier's Standards of Excellence pertaining to Professional and Personal Conduct and Attending to Duties. The charges are based on allegations that the Claimant was insubordinate when he refused to drive a truck. A hearing and investigation was held on November 30, 2016. On December 7, 2016, the Claimant was notified that the Carrier found him guilty of the charges and was dismissed from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on March 6, 2017. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division on June 1, 2017. The claim is now properly before the Board for adjudication.

The Carrier maintains that the Claimant was insubordinate on November 2, 2016, when he refused to drive a truck after being asked to do so by his Foreman William Vespe and Track Supervisor Aaron Jones. It contends that the Claimant later engaged in a loud and confrontational argument with Jones.

The Carrier argues that the evidence supports its finding of guilt and that the Claimant has a poor disciplinary record. It cites numerous waiver agreements wherein he was assessed suspensions and a final warning; the most recent was dated August 9, 2016, where he received a suspension and final warning that any additional violations could lead to his dismissal.

The Organization argues that the record does not meet the requisite proof of insubordination. It maintains that witness testimony establishes that foremen regularly canvas employees, in seniority order, for anyone willing to drive a truck. The Organization contends that once the Claimant indicated he did not want to drive the truck, other employees could have been asked instead. The Organization asserts that the Claimant was not ordered to drive a truck and could not have been insubordinate. It maintains that the telephone conversation between the Claimant and Jones was not witnessed by anyone and therefore, without corroboration the Claimant cannot be found guilty of refusing a direct order on the sole testimony of the accuser. The Organization also contends that the confrontation with the Claimant was instigated by Jones who was aggressive and used profanity in front of other employees.

The Board finds that the Carrier has presented substantial evidence that the Claimant was insubordinate on November 2, 2016. The testimony of Vespe, Jones, and Trackman Gary Bennett confirms that the Claimant refused to drive the truck when asked by his supervisors and the Carrier's hearing officer determined them to be credible. The Organization relies on Award No. 32890 by this Board wherein it was found that without corroborating witnesses a dismissal cannot be upheld on testimony of a sole accusing witness since conflicting versions of the event results in a "net wash". While the Organization crafts a valiant argument, Award No. 32890 is distinguishable from the record presented. Here, Foreman Vespe's testimony confirms that the Claimant refused to drive the truck when asked. His testimony is consistent and corroborates Jones' testimony that the Claimant refused to drive the truck. Jones testified that he called the Claimant and asked him again to drive the truck since he had no one else to do it, and sent him home when he refused.

The fact that another employee was assigned to drive the truck does not change the evidence that the Claimant was insubordinate. Vespe's belief that the Claimant was not insubordinate to him does not affect Jones' separate conclusion based on their conversation and his continued refusal to drive the truck.

The ensuing argument between Jones and the Claimant was subsequent to his refusal to drive and does not change the weight of the evidence that he was insubordinate. While the record indicates the supervisor acted in an unprofessional manner, his conduct did not cause the preceding defiance by the Claimant.

Having found that the Carrier has met its burden of proof, we assess the penalty imposed and find that the record does not contain any evidence that it was arbitrary or capricious in dismissing the Claimant. There is ample arbitral precedent that insubordination can lead to dismissal even where there is no previous discipline. A directive by a supervisor is not open to debate. The applicable standard when there is an objection to a directive is to "obey first, grieve later". Here, the Claimant believed he had the authority to decide that someone else should drive the truck after being asked by his foreman and directed to by his supervisor.

It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The Claimant is no stranger to discipline and has been given ample opportunity by the Carrier to correct his performance and conduct to no avail. In a short period of service to the Carrier he has been suspended several times and no more than three months before the incident of November 2, 2016, signed a waiver

agreement wherein he accepted a thirty-day suspension and a final warning that a future violation could lead to dismissal. We cannot therefore, consider the Carrier's decision to dismiss the Claimant arbitrary or capricious.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant was insubordinate and violated the Carrier's rules.

**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 17th day of May 2019.**