

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43614
Docket No. SG-44598
19-3-NRAB-00003-180020**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak):

Claim on behalf of S. Tucci, for compensation for all time lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of a 10-day actual suspension to the Claimant without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 22, 2016. Carrier's File No. BRS-SD-12030. General Chairman's File No. AEGC 2016-106-4. BRS File Case No. 15643-NRPC(N).”

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 Claimant, Shane Tucci, a Communication & Signal Helper, was assessed a ten-day suspension on July 5, 2016, after an investigation held on June 22, 2016 for violating the Carrier's Standards of Excellence governing Attending to Duties, Professional and Personal Conduct, and the Workplace Violence Policy. The charges include the Specification:

"On May 24, 2016, it was reported to Amtrak Foreman Rodney Foura, by BRS Helper, Charles Baynes, that Shane Tucci, a fellow Amtrak BRS Helper, had engaged in a verbal assault on Mr. Baynes while working at the Wilmington Shops. During an investigation, it was determined that both employees engaged in a verbal confrontation. These actions exhibited by Mr. Tucci when he engaged Mr. Baynes in a verbal confrontation and verbally assaulted him violates Amtrak's Workplace Violence Policy and Amtrak's Standards of Excellence."

The Carrier issued a final written decision sustaining the ten-day suspension on September 5, 2017 and denied subsequent appeals by the Organization. The Organization filed its notice of intent with the Third Division and the claim is now properly before the Board for adjudication.

The Carrier maintains that the Claimant engaged in threatening and improper conduct when he confronted a co-worker, Charles Baynes, while on duty. It contends that the Claimant threatened to kill his co-worker during the verbal exchange.

In discipline cases, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. The Board has reviewed the evidence and testimony and finds that there is substantial evidence in the record that the Claimant violated the Carrier's rules and applicable regulations when he instigated and engaged in a verbal confrontation with his co-worker. However, we do not find that there is sufficient evidence to conclude that the Claimant threatened Baynes with bodily harm.

It is well established that credibility determinations of witnesses by the

Carrier are not to be disturbed absent evidence that its conclusions are arbitrary. Arbitral precedent has established that the Board sits in review of the Carrier's findings made on the property and does not make *de novo* findings. Here however, the witness testimony does not support Mr. Baynes allegation that the Claimant threatened to kill him. Absent such corroboration we find that the Carrier's reliance solely on Mr. Baynes' testimony to be arbitrary.

Leniency is reserved to the Carrier except where there is evidence of an abuse of discretion or where the penalty imposed is excessive. Given the lack of sufficient evidence to support the allegation of a physical threat, we find the penalty imposed to be excessive. However, we find that the Claimant's conduct in confronting Mr. Baynes with vulgar and improper language violates the Carrier's rules and policies that gave the Carrier just cause to pursue disciplinary charges against him.

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 not provided substantial evidence that the Claimant engaged threatening, violent behavior. The Carrier has established that the Claimant engaged in misconduct when he confronted his co-worker with vulgar and improper language while on duty. Based on the foregoing, the penalty imposed is reduced to a five-day suspension without pay. The Claimant is warned that continued misconduct will lead to severe discipline, up to and including dismissal.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 17th day of May 2019.