

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43617
Docket No. MW-44631
19-3-NRAB-00003-180074**

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

**(Brotherhood of Maintenance of Way Employees 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 [ten (10) day actual suspension to be served as directed by the Carrier] imposed upon Mr. J. Ciferni, by Carrier letter dated September 27, 2016, for alleged violation of various Carrier rules in connection with an incident that occurred on October 14, 2015 was without just and sufficient cause and excessive (System File NEC BMW-SD-5471D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Ciferni shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.” ”**

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, John Ciferni, has been a Foreman for the Carrier for approximately 18 years. On October 28, 2015, the Claimant was charged with violating the Carrier's Standards of Excellence pertaining to Attending to Duties and Professional and Personal Conduct, and the Workplace Violence Policy (hereinafter referred to as the "Policy") P/1 Number 3.12.0 particularly Sections 5.0, 5.1, and 5.7, including the following Specification:

"On Wednesday, October 14, 2015, at approximately 8:25AM, it was reported to Francis Trincia, Supervisor of Facility Maintenance that Amtrak B&B Mechanics John Ciferni and David McGrory had engaged in an altercation while working at Wilmington Shops. The actions exhibited by both employees violate Amtrak's Workplace Violence Policy and Amtrak's Standards of Excellence."

The charges are based on allegations that the Claimant used profanities and threatened Bridge and Building ("B&B") Mechanic David McGrory on October 14, 2015. After a postponement the hearing and investigation was held September 13, 2016. On September 27, 2016, the Claimant was notified that the Carrier found him guilty of the charges and was assessed a ten-day suspension from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on March 20, 2017. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

The Organization argues that the Carrier's decision to suspend the Claimant is arbitrary and capricious in that it fails to recognize that the Claimant did not instigate the confrontation and has been previously harassed by McGrory. It alleges that on October 14, 2015, McGrory continued that harassment when he verbally instigated the Claimant who was feeling ill and trying to recuperate in his vehicle. The Organization also maintains that while both employees were disciplined, the record does not support the excessive discipline imposed and therefore, concludes that the Claimant is being treated disparately with a much more severe penalty than McGrory.

The Board finds that the Carrier has presented substantial documentary evidence and witness testimony to satisfy its burden of proof that the Claimant has

violated the Workplace Violence Policy. Despite the Organization's valiant argument, the record sufficiently establishes that that the Claimant was the aggressor and threatened McGrory using vulgar and inappropriate language. McGrory's testimony is corroborated by Bricklayer Michael Petrillo and is consistent with the written documentation that was obtained contemporaneous with the confrontation.

It is a well-established precedent that credibility determinations by the Carrier are not to be disturbed unless there is evidence of irrational findings that can be characterized as arbitrary or capricious. Nothing in the record indicates that the Carrier's conclusions are irrational when considering the testimony of the witnesses.

Arbitral authority in the industry also establishes that leniency is reserved to the Carrier where there is no abuse of discretion. The record regarding the charges of October 28, 2015 does not contain any evidence that the Carrier was biased in assessing a ten-day suspension. The discipline imposed does not constitute disparate treatment when compared to McGrory's where he pled guilty in a waiver agreement and the record establishes that the Claimant engaged in threatening behavior. Legions of arbitration awards have found workplace violence involving threats and profanities to be grounds for dismissal. Considering the record established and the finding of guilt, the Carrier's decision to impose a ten-day suspension cannot be considered arbitrary or excessive.

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 engaged in threatening and improper behavior in violation of the Carrier's Policy.

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 17th day of May 2019.