

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43894
Docket No. SG-44844
20-3-NRAB-00003-180281**

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim in behalf of E. Turner, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of the matter removed from his personal record, account Carrier violated the Signalmen's Agreement particularly Rule 57, when it issues the harsh and excessive discipline of dismissal 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 November 2, 2016.”

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 relevant facts giving rise to this dispute are as follows:

By letter dated October 13, 2016, the Carrier issued a Notice of Investigation dated and scheduled the investigation for November 2, 2016 to review the following Charge and Specification:

Charges:

1. Violation of Amtrak's "Standards of Excellence" pertaining to the sections entitled Trust and Honesty, Professional and Personal Conduct and Attending to Duties, which read in pertinent parts:

Trust and Honesty: *"Because honesty is so important to trust and our ability to work together as a team, Amtrak has no tolerance for employees who are dishonest."*

Professional and Personal Conduct: Teamwork- . . .Part of teamwork is properly performing your duties. Another part is following instructions. Therefore, you must comply with all company and departmental policies, procedures and rules as well as all instructions, directions, and orders from supervisors and managers."

Conduct: "On the Amtrak team, there is no place for activities or behaviors that compromise the safety, satisfaction and well-being of our customers, the public or our fellow employees . . ."

Attending to Duties: ". . .As an Amtrak employee and, therefore, the company's most important resource, you have an obligation to perform your duties properly and in accordance with the standards set for your particular job. That requires that you remain alert to your duties at all times. Any activity or behavior that distracts or prevents you or others from attending to duties is unacceptable." "

2. Violation Cardinal Rules for Cheating on required exams.

Specification:

On Tuesday, October 4, 2016, Amtrak Maintainer Eric Turner was taking a Physical Characteristics test in Philadelphia, PA. At approximately 12:35 PM, when

Mr. Turner signed in, he was given a PH 1, 2, 3 C&S Test by Technical Trainer Annmarie Grisafi who was conducting the testing event. At Approximately 1:20 PM, Mr. Turner had completed his test. He then handed the completed test to Ms. Grisafi. As soon as Mr. Turner handed in his test, Ms. Grisafi noticed that what Mr. Turner turned in was not the same test that was handed out to him. Mr. Turner maintained that the test he turned over to Ms. Grisafi was the same test that he was given at the beginning of the testing event. Mr. Turner's attempt to turn in a test which was different from that which was handed to him by Ms. Grisafi is a violation of not only Amtrak's Standards of Excellence but also a violation of Amtrak's Cardinal Rules.

The formal investigation was scheduled and occurred on November 2, 2016. The Claimant and his BRS representative attended this investigation and were given the opportunity to question witnesses, examine evidence and submit evidence on their own behalf.

By Decision dated November 8, 2016, Hearing Officer Francis Krische found substantial evidence in the record to support the allegation that the Claimant was guilty of the charges that he cheated on his physical characteristics (PC) exam. As a result, the Claimant was assessed a 30-day actual suspension effective November 16, 2016.

By letter dated November 17, 2016, the Organization appealed the discipline determination to the Deputy Chief Engineer C&S who held an appeal hearing on December 6, 2016. On December 21, 2016, Deputy Chief Engineer issued the second level denial letter in which he agreed with the Hearing Officer decision and accordingly upheld the Claimant's termination. By letter dated December 23, 2016, the Organization appealed to the Carrier's highest designated officer. The parties conferenced the appeal on February 2, 2017, and by letter dated April 3, 2017, the Carrier denied the appeal in its entirety.

The Organization filed a notice of intent to file a submission with the NRAB Third Division dated January 3, 2018. By letter dated January 17, 2018, the NRAB notified the parties of the April 2, 2018 deadline for submission of briefs and exhibits to the NRAB.

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on November 19, 2019.

The Carrier and Organization are parties to a Collective Bargaining Agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Claimant's craft. The instant appeal has been handled in the usual manner up to and including the highest officer designated by the Carrier to handle such disputes, and has been discussed with and denied by that officer. Therefore, the dispute is properly referable to this Board in accordance with Section 3, First (i) and (h) of the Railway Labor Act.

This is a claim for rescinding Eric Turner's (Claimant's) termination together with a make-whole remedy. The circumstances giving rise to the Claimant's termination and the resulting claim are detailed below.

Technical Trainer Annmarie Grisafi, who administered the exam at issue, testified that on October 4, 2017 at approximately 12:35 PM, the Claimant entered the testing room, signed in, and took a PC exam from Ms. Grisafi. At about 1:10 PM, Ms. Grisafi testified that she stepped out of the testing room for a few moments to retrieve something off the printer. When Ms. Grisafi returned, she collected the test from the Claimant at the end of the exam and upon seeing what the Claimant handed her immediately recognized that something was not right in that the test the Claimant handed her was not the same test as she gave him at the beginning of the exam. In this regard, Ms. Grisafi testified that what the Claimant returned to her was a photocopy and not the printed test that she had passed out. In this regard, Ms. Grisafi was quite specific about what she handed to the Claimant vs what she received back from him. As an example, Ms. Grisafi testified that the exams that she handed out to students are always double-sided, while the exam that the Claimant handed back to her was only printed on one side.

Donald Herman, Lead Technical Instructor, confirmed what Ms. Grisafi recalled as he personally examined both tests and recounted the distinctions between the two at the hearing. In this regard, Mr. Herman explained that "many of the pages of the test (handed in by the Claimant) were written in pencil and written over with a black ink pen." Many of the pages had marks clearly left by a copier and were not clean and focused. As part of his role as Lead Technical Instructor, Mr. Herman printed the exam and gave it to Ms. Grisafi to hand out to the Claimant as well as to other employees. Mr. Herman vividly recalled that the tests that he printed consisted of six double-sided pages, while the exam the Claimant returned was an 11-page document consisting of single-sided pages. Mr. Herman's recollection is consistent with Company policy to print the exams on both sides of the paper. Mr. Herman also testified that he wrote the Claimant's name on the top right-hand corner of the test and the name on the

test returned by the Claimant was not in his, Mr. Herman's, handwriting. Mr. Turner summarized the test returned by the Claimant noting: "it appears to me as though this is a copy of a test we don't use, that it was not the test that I had printed out and given to Ms. Grisafi to give to Mr. Turner for the test." Having reviewed this record, the Board can find absolutely no motive or reason why Mr. Herman would not give truthful testimony. In reviewing the conflicting testimony between the Claimant and Mr. Herman, the Hearing Officer chose to credit the testimony of Mr. Herman. This Board finds no basis upon which to modify or reject the Hearing Officer's findings and conclusions and accordingly, we find, by his actions, the Claimant was dishonest.

Mr. Herman testified that following the incident, the Claimant offered him the opportunity to look through his, the Claimant's, bag and search for the original exam. However, Mr. Herman noted that this offer by the Claimant occurred five to ten minutes after the Claimant left the area and then returned with the bag.

Having concluded that there is substantial evidence in the record to support the allegations, there remains a question as to the appropriate discipline. Given the severity of the Claimant's actions, the Board finds that the imposition of dismissal from service represents an appropriate penalty.

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 28th day of January 2020.