

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44558
Docket No. MW-46180
22-3-NRAB-00003-200794**

The Third Division consisted of the regular members and in addition Referee I.B. Helburn 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 [thirty (30) day actual suspension and final warning] imposed upon Mr. J. Ciferni, by letter dated June 19, 2019, for alleged violation of Amtrak’s Standards of Excellence and Anti-Discrimination and Anti-Harassment Policy in connection with allegations he sent an e-mail to a number of persons on January 31, 2019 negatively stereotyping Program Manager A. Bhaskaran’s nationality was arbitrary, capricious and constituted a violation of the Agreement (System File BMW-153906-D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. shall be compensated for wage loss suffered including any and all overtime and expenses lost.”**

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, a B&B Inspector, has established and holds seniority within the bargaining unit represented by the BMW. His record includes a September 27, 2016 ten (10) day actual suspension for an October 14, 2015 incident when Mr. Ciferni was found to have been the aggressor, using “vulgar and inappropriate” language to threaten a fellow Amtrak employee. On January 30, 2019 Program Manager Ajith Bhaskaran, of Asian Indian heritage, met with the Claimant and e-mailed the following to him under the subject of “Record of Verbal Instruction to John Ciferni.” The body of the e-mail told the Claimant to “Please see the employee records I entered on EERS after this afternoon’s meeting with you. I’ll mail a copy of these to you soon.” The Claimant responded to Mr. Bhaskaran, to his Organization Representative, Vice Chairman Gene Anirina, and others with the following e-mail:

All these charges are fake. There is not an ounce of truth to anything Ajith has written. This is just another example of Ajith harassing me. Discriminating against me, bullying (sic) me, defaming my character, denying me access to Amtrak property, denying me equal opportunity, coercing false and untrue statements against me, making false innuendos, delaying entering my name in EPS system, retaliating against me for reporting numerous safety violations on the Façade project, financially discriminating against me. There is so much more Ajith has done to me and I have dozens of witnesses and documentation to prove statement. *Wayne Pussey said to me in Ajith’s native country this is how bosses treat the people who work under them.* I responded to Mr. Pussey that this is the United States of America and I work for the Nations (sic) Passenger Railroad. Equal rights, equal opportunity and a safe place to work without intimidation and for performing my duties. At this point I am requesting that all these Fake (sic) remove from my EERS (Italics provided by the Board).

The e-mail, and in particular the italicized sentence, resulted in a February 22, 2019 Notice of Investigation (NOI) directing the Claimant to attend a formal investigation at 10:00 AM, March 1, 2019 at the Amtrak 30th Street Station, Philadelphia, PA. The NOI contained detailed charges and specification. Ultimately the investigation was conducted on June 11, 2019, time and location unchanged. By letter dated June 19, 2019 the Carrier informed Mr. Ciferni of its conclusion that a violation of Amtrak’s Standards of Excellence, Discrimination and Harassment, and Amtrak’s Anti-

Discrimination and Harassment Policy, Section 4.3 Harassment had been proven. The thirty (30) day actual suspension and final warning were issued via letter dated June 24, 2019.

The Organization responded to the imposed discipline with a timely claim on Mr. Ciferni's behalf.¹ The claim was properly processed on the property without resolution and thereafter progressed to the Board for final and binding adjudication.

The Carrier contends that the e-mail provides sufficient proof that the Claimant violated the above-noted Standards of Excellence and Policy. Mr. Bhaskaran testified that he felt harassed and discriminated against because of the negative stereotyping in the untrue e-mail. The Organization's contentions are without merit. The Claimant was not simply reporting Mr. Pussey's comment, but sent a harmful, insulting e-mail. The Carrier could not compel the now-retired Mr. Pussey to testify as he would not cooperate. The time claims that concerned the Claimant are irrelevant because Mr. Bhaskaran did not handle such claims. The Carrier committed no violations that prejudiced Mr. Ciferni's rights and did not have to stay the discipline because the charges were serious. The discipline not only was appropriate but also, if anything, lenient in view of the Claimant's history of inappropriate behavior and failure to accept responsibility. The Carrier rightfully considered the Claimant's entire disciplinary record and issued discipline in accordance with discipline for similar infractions.

The Organization insists that just cause standards should be applied and that the Carrier has not provided substantial evidence of a violation. The Claimant did not receive the required fair and impartial hearing with all due process rights intact because Mr. Pusey, who was listed as a witness and who initially uttered the allegedly offensive remark, did not appear. The Organization views him as a material witness. The Claimant simply repeated what Mr. Pusey had said about Mr. Bhaskaran as an explanation of Inspector Ciferni's concerns and not as an attempt to harass or negatively stereotype Mr. Bhaskaran. The Claimant had previously raised concerns about his supervisor, but these concerns had gone uninvestigated. Mr. Bhaskaran, who has been indicted on a federal criminal complaint, was not a credible witness. The suspension, excessive because it was meant only to punish rather than to rehabilitate, should have been stayed in accordance with the clear language of Rule 74.

¹ The claim is dated May 10, 2017, but stamped as received by Amtrak on July 2, 2019. The Carrier has not contended that the claim was untimely and the Board concludes that the May 10, 2017 date is simply erroneous.

The Amtrak Standards of Excellence at Section IV.D Discrimination and Harassment states in relevant part:

Treating each other with respect and professionalism is foundational to fostering the cooperation, collaboration and teamwork that are key to the success of the company. Amtrak expects you to act professionally and respectfully. Discrimination or harassment of any kind by our employees toward our customers or fellow employees is inconsistent with our values and will not be tolerated.

The Carrier's Anti-Discrimination and Anti-Harassment Policy includes the following definition:

4.3 Harassment. For purposes of this policy, harassment is defined as verbal, physical, written or visual conduct that offends, belittles, denigrates or shows aversion to a person or group based on personal characteristics or protected activities. This may include, but is not limited to the following actions when based on or related to personal characteristics or activities:

- Using epithets, slurs . . . or engaging in negative stereotyping
* * *
- Possessing, sending or displaying offensive written or electronic materials including email and screen saver graphics.

The Board first contemplates the Organization's procedural contention that the Carrier's failure to stay the discipline violated Rule 74 of the NEC Agreement with the BMWE. Rule 74.a.1. states in relevant part: "The appeal, when the discipline imposed is suspension, shall act as a stay (except in the case of a major offense) in imposing the suspension until after the employee is given a hearing." For two reasons, the Board finds that the inclusion of the italicized sentence in the Claimant's e-mail appeared to be a major offense. Amtrak employees have been dismissed with subsequent claims denied for reference to a third party's Portuguese employees in vulgar, derogatory terms, with the reference offending an Amtrak employee of Portuguese descent as well as others (Public Law Board 6062, Case 32); for a disrespectful, anti-Jewish comment made to an Amtrak passenger (Public Law Board 5274, Award 83); and for a comment mocking an Amtrak employee's disability (Special Board of Adjustment 973, Award 878). While none of these three cases involved the question of staying the

discipline or Claimants represented by the Organization, it is obvious that the Carrier is serious about enforcing the relevant Standard of Excellence and Policy. The Board does not find the Carrier's consideration of the e-mail as a major offense to have been arbitrary in light of the information available at the time that decision was made.

The Claimant could have made his point by sending the e-mail without the italicized sentence and by beginning the sentence that followed with "This is the United States of America . . ." The italicized characterization of Mr. Baskaran, his direct supervisor, was unnecessary and irrelevant. It was hurtful and constituted negative stereotyping. The Board is aware that the Claimant insists that he was simply reporting Mr. Pussey's comments but, in fact, when he elected to include those comments in his e-mail, he assumed ownership of the comments and therefore violated the above-noted Standard of Excellence and Anti-Discrimination and Anti-Harassment Policy. Particularly considering the Claimant's previous ten (10) day actual suspension, the Board considers the thirty (30) day suspension to be an appropriate Carrier response.

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 8th day of October 2021.