

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44605
Docket No. SG-46228
22-3-NRAB-00003-200932**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of B.S. Graziano, 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 May 14, 2019. Carrier's File No. 088.19PH. General Chairman's File No. 20197. BRS File Case No. 16207-NRPC(S). NMB Code No. 119.”

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.

At the time of the events herein, the Claimant was assigned to the position of C&S Trainee in the Carrier's Signal Department. On April 2, 2019, the C&S employees at the Northeast Headquarters were participating in an Employee Appreciation Day that included testing, a cookout, games, and general clean up of the area.

Amtrak C&S Foreman Floyd Collins instructed the Claimant to wash a company truck. The Claimant failed to follow this instruction and responded with inappropriate language. After Collins returned to ask the Claimant to wash the truck a second time, the Claimant responded in a way that made Collins feel threatened. The Claimant admitted that he did not follow Collins' instructions, stating that he felt the Foreman was trying to provoke him.

On April 26, 2019, the Claimant was instructed to attend an investigation pertaining to the following specification:

On Tuesday, April 2, 2019, Amtrak C&S Foreman, Floyd Collins, instructed C&S Trainee, Brad Graziano to wash a company truck. Mr. Graziano refused to follow Mr. Collins's instruction and responded to Mr. Collins with inappropriate language. Mr. Graziano also addressed his familial link to the Italian "mob" to Mr. Collins, which Mr. Collins found threatening. Not only was Mr. Graziano insubordinate when he refused an instruction by Mr. Collins, but he also exhibited unprofessional conduct when he used inappropriate language and made threatening comments to Mr. Collins. These actions by Mr. Graziano violate Amtrak's Standards of Excellence.

After a formal investigation on May 14, 2019, the Claimant was found in violation of Amtrak's "Standards of Excellence" related to the sections entitled Workplace Violence and Security: Conduct, Follow the Rules, and Attending to Duties, and was assessed a Ten Day Suspension.

By letter dated May 24, 2019, the Organization presented a claim to the Carrier which was denied by letter dated July 1, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has presented substantial evidence of Claimant's violations, as Claimant has admitted the insubordination of refusing Collins'

instruction to wash the truck. The Carrier contends that the Claimant's admission makes it unnecessary to produce further evidence of his guilt.

The Carrier contends that the Claimant was insubordinate when he refused to wash the truck and that if he felt that the request was harassing or otherwise inappropriate, he could have objected after complying with the directive. The Carrier contends that the Claimant's only option was to "obey now, grieve later."

The Carrier contends that the Claimant's denials of having suggested that he was connected to the Italian mob were refuted by other Carrier witnesses. Furthermore, even if the Organization is correct and Collins' request was improper, the Claimant was obligated to conduct himself in a professional manner and to resolve issues through proper channels, not make threatening statements to his foreman.

The Carrier contends that the discipline was not excessive, as numerous boards have upheld long-term suspensions and dismissals for insubordination and threats of workplace violence. The Carrier contends that it takes threats seriously and such conduct toward a superior is especially egregious. The Carrier contends that it chose to exercise leniency when it assessed only a ten-day suspension and gave the Claimant the opportunity to finish his training and prove himself a valuable employee. A 10-day suspension is certainly justified for a short-term employee.

The Organization contends that the Carrier has failed to show with substantial evidence that the Claimant made a threat which constituted workplace violence toward Collins. The Organization contends that the Claimant denies suggesting that he was connected to the Italian mob and that there is no evidence that the Claimant acted aggressively toward the foreman. The Organization contends that the Claimant engaged in nothing more than "shop talk" which is common among these employees, especially on a relaxed day.

The Organization contends that the Carrier has failed to show that the Claimant was insubordinate. The Carrier cannot show that the Claimant refused a direct order after being warned of the consequences of failing to follow it.

The Organization contends that even if a violation had been proven, the discipline of a ten-day actual suspension was unwarranted. The Organization contends that the Carrier failed to abide by the principles of progressive discipline.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The Board finds that there is no dispute that the Claimant's foreman directed him to wash a truck and the Claimant did not follow this directive, because he did not agree that he should have to do it. Although it appears that the truck was eventually washed, the Claimant did not follow this directive. According to Collins, the Claimant told him that he was "just a foreman" and there was nothing he could do about the Claimant's refusal. The Claimant has admitted that he did not perform the task asked of him because he felt singled out and harassed. Where there is an admission of guilt, there is no need for further proof.

Insubordination can take many forms and is not limited to the "classic" definition described by the Organization. The charge is appropriate whenever an employee appears to be "thumbing his nose at management's authority," in deliberate defiance of the chain of command. If the Claimant felt that Collins' directive was improper, his remedy was to obey the directive and to grieve it afterward. His decision to ignore a foreman's direction and to tell him in front of other employees that he couldn't do anything about it, was clearly insubordinate. This Board finds that sufficient evidence exists to support the finding of the Claimant's violation.

The Carrier also charged the Claimant with Workplace Violence. Specifically, Collins testified, with support from other witnesses, that the Claimant responded to his directive by stating that he was Italian and had cousins. Collins said that he replied, "Is that a threat?" Collins said that the Claimant suggested that he would come after him with the Italian mafia. Two witnesses corroborated Collins' account. The Claimant denied this threat, testifying that he only said that he had many railroaders in his family and that he was going to get advice from them regarding how Collins was treating him.

There is little in the way of objective evidence in the record to support or detract from the testimony of either side. Under such circumstances it is the Carrier's obligation to make credibility determinations to which this Board is required to defer in the absence of evidence that they were made improperly. Finding no impropriety in the

determination, we are constrained to accept the Carrier's findings of fact. Thus, the Carrier has also presented substantial evidence to support its charge that the Claimant threatened Collins with workplace violence.

Threats of workplace violence and Insubordination are both serious charges, which in some circumstances may lead to dismissal. As a result of these conclusions, we find that a ten-day actual suspension for the proved charges is neither harsh nor excessive.

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 29th day of October 2021.