

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45368
Docket No. MS-46789
25-3-NRAB-00003-240430**

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

(Mr. David Fitzgerald

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“I was wrongfully and unfairly fired. I was charged with dishonesty receiving gifts from the contractor in exchange for favors. In my hearing there was no evidence shown or given that I had done either. Testimony in my hearing clearly states I was totally honest and did not withhold any information. It further shows there were no favors granted. In my 12 years of employment at Amtrak over tens of that time I work very close with Contractors and there has never been any complaints from any of them only gratitude. Amtrak fired me stating I violated a policy back in 2016. The policies they used for my trial were implemented in 2018 and 2020. My craft (B/B Inspector) was never trained or taught this policy. After investigation of a Manager in 2019 Managers were trained in this policy. After Amtrak fired me they now have training for my craft. I have a clean record with Amtrak. I was never offered any other disciplined other than termination. I believe I should be reinstated with all seniority and rights. I was not treated fairly and was prejudices in this ruling.”

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.

Claimant has a seniority date of April 20, 2009. According to the Carrier, in December 2015, the Carrier awarded a \$58,473,000 contract to Mark 1 Restoration Company for a project to repair and restore the façade of Philadelphia's 30th Street Station. In July 2016, Amtrak awarded the Claimant the position of Daylight Safety Inspector on the project, where Ajith Bhaskaran served as his Supervisor. The Claimant's duties included conducting safety briefings for the Mark 1 Contractors and observing the Contractors for any safety violations.

During the course of the project, Amtrak's Office of Inspector General (OIG) received a complaint, alleging unethical and criminal behavior by Amtrak Managers working on the project.

The OIG interviewed the Claimant on November 14, 2019 and December 3, 2020. The Claimant informed OIG agents that in 2016, Mark 1 Project Manager Thomas McLaughlin gave the Claimant his personal credit card and authorized the Claimant to purchase a furnace for a church in which the Claimant serves as Pastor. The Claimant admitted that he used McLaughlin's credit card to purchase a furnace for approximately \$900. Two years later, the Claimant went shopping with McLaughlin and Bhaskaran at a Macy's in Philadelphia, where McLaughlin paid for a suit and a pair of shoes for the Claimant. McLaughlin's expense report revealed that he paid \$420 for the suit and shoes.

On January 5, 2021, the OIG issued a Report detailing the results of an investigation into the allegations that the Claimant improperly accepted gifts from McLaughlin. The OIG's Report stated in part, "In addition, we also found that Fitzgerald violated company policies by accepting gifts from Thomas McLaughlin, Project Manager, Mark 1, including a furnace for his church, a suit, and pair of shoes."

By letter dated January 11, 2021, the Claimant was notified of the following Specification and was informed to appear for an Investigation on February 1, 2021:

Specification:

On January 5, 2021 Engineering Management was made aware of an OIG Investigation involving B&B Inspector David Fitzgerald. Mark Restoration Company (Mark 1) based out of 30th Street Station Philadelphia PA, was awarded \$58,000,000 contract to repair and restore the façade of 30th St. Station. In his role as the B&B Inspector, Mr. Fitzgerald was the Amtrak employee responsible for daily safety related issues and concerns, as they related to this project, and he worked closely with Mark 1 contractors at 30th Street Station. Mr. Fitzgerald violated Amtrak policies when he dishonestly accepted gifts and favors from these contractors; thereby taking advantage of his business relationship with Mark 1, to personally benefit himself.

The investigative Hearing was rescheduled to February 4, 2021 and rescheduled again to February 25, 2021. Upon convening on February 25, 2021, the hearing was recessed until March 19, 2021. The Claimant and his Representative attended the investigative Hearings on both February 25 and March 19, 2021 and were permitted to question witnesses and present evidence. On March 29, 2021, the Hearing Officer issued a decision, with a finding that the Charges were proven. By letter dated March 30, 2021, Amtrak issued the discipline of Termination.

By letter dated April 6, 2021, the Organization appealed the discipline to Manager Labor Relations, Jeremy Milewski. The appeal was denied on May 13, 2021. This case is properly before this Board.

According to the Claimant, the discipline imposed upon the Claimant was unwarranted, harsh and excessive. The Claimant contends that the burden of proof in a discipline matter such as this is on the Carrier; that burden of proof has not been met. The Claimant contends that the Carrier has been arbitrary and capricious in its treatment of the Claimant, that the Carrier has abused its discretion and that the Carrier's determination to dismiss the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. The Claimant contends that he did nothing improper. The Claimant was not aware that the clothes were purchased by the Contractor, nor was he aware that the furnace purchased for his church was not simply a donation to his church. The Claimant contends that he believed that the suit and shoes were being purchased by his Supervisor, not a Representative of Mark I. The Claimant did not testify at the Investigation and thus did not have an opportunity to fully present his side of the matter. The Claimant also contends that the Carrier's Rules and Policy

were presented and were after the date of the donation. The Claimant also contends that he was not trained in the Code of Ethics. Further, even if the Claimant did engage in the relevant behavior, the penalty of Termination was too severe. At the time of the Termination, the Claimant had worked for Amtrak for approximately 12 years. Therefore, the Termination was not appropriate and must be overturned, and the Claimant must be made whole for all losses.

Conversely, the Carrier takes the position that it has met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. The Claimant had the opportunity to testify, but chose not to. According to the Carrier, a review of the transcript developed during the Hearing makes it clear that the Claimant was guilty as charged. The Claimant violated Amtrak's Standards of Excellence and Code of Ethics in his actions of accepting the furnace, the suit, and the shoes. Accepting said gratuities from the Contractor is clearly inappropriate and cannot be tolerated. Further, it is clear that based on his behavior, the Termination was appropriate. Regarding the Carrier's Rules and Policies, the Rules and Policies regarding said gratuities were effectively the same when he was hired as the latter rules. The Carrier contends that the Claimant was trained on the Rules and Policies when he was hired. While the Claimant contends that his actions were unintentional and that he was not trained on the Code of Ethics, it is basic knowledge that an employee should not accept gratuities from a Contractor. While the Claimant contends that he did not know if the suit and shoes came from the Contractor, that does not change the result. Amtrak employees are precluded from accepting gifts in excess of \$50 or an aggregate amount of \$200. The \$900 furnace was well in excess of these amounts. Further, there is no connection between McLaughlin's donation to the Grievant's church other than that McLaughlin was an employee of Mark 1. Thus, the Carrier contends that it proved by substantial evidence that the Claimant violated Amtrak's Standards of Excellence and Code of Ethics. Based on the instant offense, the Termination was appropriate and should not be overturned.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166)

This Board has reviewed the records and has found substantial evidence in the record to prove that the Claimant did engage in the instant offenses. We note that the Carrier has proven by substantial evidence that the Claimant violated Amtrak's Standards of Excellence and Code of Ethics when he was found to have accepted the furnace and clothing from a Contactor. This Board finds that the Claimant knew, or should have known, that his behavior violated the Rules and Regulations of the Carrier. While the Claimant contends that he did not know that the clothing came from the Contractor and believed that it came from his Supervisor, that does not change the result. In addition, the Rules and Policies that the Claimant received when he was hired prohibited said gratuities. The Claimant knew or should have known that neither his Supervisor nor a Contractor should be providing such items to the Claimant. Beyond the clothing, the \$900 that McLaughlin paid for the furnace was a clear violation of Policy. While it is clear that the Claimant did have approximately 12 years of service, we also consider that the offenses involved in this matter are very serious. While we note that the Carrier contends that the Claimant received a 10-day Suspension for insubordination in 2010, that is not contained in the record and will not be considered. However, the offense that the Claimant engaged in is of sufficient severity to warrant Termination. Therefore, based upon the violation alleged and the serious nature of the offenses, we find that the Carrier has proved by substantial evidence that the Claimant engaged in the offenses alleged and we cannot find that the discipline of Termination was unreasonable. Therefore, the Claim is denied.

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 19th day of December 2024.