

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45414
Docket No. MW-47758
25-3-NRAB-00003-230134**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

**PARTIES TO DISPUTE: (
(Keolis Commuter Services**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal in all capacities) imposed upon Mr. J. Iannuci, by updated letter (following a ‘Decision Letter’ dated May 22, 2022), for alleged violation of Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 6 - Equal Employment Opportunity and Prevention of Discrimination and Harassment in the Workplace and Rule 8 – Behavioral Expectations and Prohibited Behaviors, in connection with his alleged actions that were unprofessional, inappropriate and disruptive to a safe, civil and efficient work environment in that he engaged in antagonistic behavior and failed to comply with doctors’ instructions and was also rude, argumentative and disrespectful to the employees at ALLONE HEALTH at approximately 11:00 A.M. on April 29, 2022, was in violation of the Agreement, involved in the Carrier’s failure to provide a fair and impartial investigation/deprived Climant of his rights to due process and was arbitrary and capricious (Carrier’s file BMWWE 22.091 KLS).**
- (2) As a consequence of the violation referred to Part (1) above, “*** a stay should be issued with Mr. Iannuci being returned to service immediately, made whole for all hours lost including all credits and benefits due in his absence.***”**

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.

Factual Background

Claimant, Mr. John Iannuci, has been employed with the Carrier since 1999 and has worked in the Keolis Engineering Department since July 1, 2014.

The Claimant has reviewed and acknowledged the Carrier's Code of Business Conduct, including the following: Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 6 - Equal Employment Opportunity and Prevention of Discrimination and Harassment in the Workplace and Rule 8 – Behavioral Expectations and Prohibited Behaviors.

On April 29, 2022, the Claimant was required to undergo a physical to maintain his DOT license. The Carrier directed him to get this physical at AllOne Health clinic, an independent third party facility.

Upon arriving at the clinic, the Claimant refused to comply with the clinic's directive that all patients wear masks. He argued and spoke loudly in a derogatory manner in the waiting area prior to being admitted for examination. Upon being admitted, the Claimant resisted the drug screen procedure, repeatedly removing his mask, swearing loudly and using profanity towards the medical assistant attempting to perform the drug screen. The physician in charge at the time, Dr. Marisol Sepulveda, intervened asking him to wear the mask, and allow the staff to perform their job. Because the Claimant continued to be antagonistic, Dr. Sepulveda asked a male clinic employee, Mr. Dakota Lacoy, to chaperone and be present for her examination of the Claimant.

When introduced to Dr. Sepulveda, the Claimant asked with a snicker, “you’re the doctor?” The Claimant then asked “is this place run by women?” As Dr. Sepulveda asked the Claimant relevant questions related to the DOT test, the Claimant deflected her questions responding with incomplete and indirect answers. He continually interrupted her examination, making sarcastic statements about women running clinics and women having “hyphenated last names.”

When Dr. Sepulveda asked the Claimant to remove his pants so she could conduct a hernia examination, the Claimant refused, saying he did not want women to see or be distracted by his “big penis.” He eventually removed his pants and allowed Dr. Sepulveda to complete her examination.

After concluding her examination, Dr. Sepulveda determined that the Claimant did not meet the criteria to pass the DOT examination.

When the Claimant learned he did not pass, he became irate and asked “who makes these rules, a bunch of women?” As Dr. Sepulveda attempted to explain why he failed and what he needed to do to satisfy the DOT testing requirements, the Claimant repeatedly interrupted Dr. Sepulveda saying “you stupid women have no idea what the hell you’re talking about.” He also berated women with hyphenated last names and declared that the clinic was nothing more than a conspiracy of women. As his argumentative and belittling conduct continued, clinic officials asked the Claimant to leave. While exiting the clinic, he loudly declared “this is fucking ridiculous.” Not long after he left, clinic officials notified the Carrier of the Claimant’s conduct.

Upon returning to work, the Carrier asked the Claimant to provide a written statement explaining his actions at the clinic:

Right from the get go I felt like I was being talked down to. I was told I could not leave my jacket on the chair. I had to wash my hands. I had to wear a mask that was causing me a headache. I was talking about recent events and I was told to stop talking in a derogatory manner. They asked a male to come into the room. I talked to him and he left. Not to sound sexist but at that point a female came into the room. She looked like she could throw me thru the wall. I stopped talking at that point. I was told to pull my pants down in front of 2 women so they could do a hernia test, and once again I felt uncomfortable and did it anyway. I passed all sight and hearing tests. Blood pressure was high, based on how I was being

talked to and treated. Remember the females running the show and making it a point they were in charge. I was talking about work related incidents like the guy that slammed into my truck and passed away and about Joe G____'s death that I had experienced. Also I talked about competing in this year's Boston Marathon for my deceased brother in law who fell down the stairs and passed away and in spite of all of this stayed alcohol and drug free 16 years now. I went thru a divorce and I know first hand that it is a stressful time for everyone and the problem is I treat people like I want to be treated and it just does not work that way. So when I am treated bad I defend myself and another thing I promptly admit when I'm wrong. It is what you do. It is part of being in recovery.

On May 3, 2022, the Carrier issued a Notice of Formal Investigation to the Claimant, regarding his behavior at the clinic and his failure to comply with doctors' instructions. The notice stated

You were also rude, argumentative, and disrespectful to the employees at ALLONE HEALTH. Your alleged actions were unprofessional, inappropriate, and disruptive to a safe, civil and efficient work environment.

The investigation was initially scheduled for May 6, 2022. On May 5, 2022, the Carrier postponed the investigation and rescheduled it for May 16, 2022. The Carrier also removed him from service.

The investigation occurred on May 16, 2022. At the hearing, the Carrier called two witnesses from ALLONE HEALTH, Ms. Lori Burke, the clinic's director and Mr. Lacoy. The Organization objected to the written statements prepared by these witnesses and to their testimony, arguing that the Carrier had failed to give the requisite notice required by Rule 15. The Organization also objected to the Carrier's offer of the Claimant's April 29, 2022 written statement, arguing that he prepared it without union representation.

After reviewing all the evidence, the Hearing Officer concluded in its Decision Letter dated May 25, 2022, that the Claimant violated Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 6 – Equal Employment Opportunity and Prevention of Discrimination and Harassment in the Workplace and Rule 8 – Behavioral Expectations and Prohibited Behaviors when he acted unprofessionally and inappropriately at the clinic, failed to comply with the

doctor's instructions, and was argumentative and disrespectful to clinic employees. The Carrier determined that Claimant's violation of the rules and policies warranted dismissal.

Carrier's Position

The Carrier maintains that the evidence fully substantiates and supports its conclusion that the Claimant engaged in the misconduct alleged and that he violated the rules and policies identified in the charging documents. The Carrier claims, contrary to the Organization's allegations, that there were no violations of the parties' Agreement and the Claimant was afforded due process. The Carrier also contends that dismissal was appropriate given the nature and egregiousness of the Claimant's conduct.

Position of Organization

The Organization contends that the Carrier failed to satisfy its burden of providing sufficient evidence to support the charges alleged and that the discipline imposed was arbitrary and capricious. The Organization maintains that the Carrier failed to conduct a fair and impartial hearing because (a) the Claimant's written statement was prepared without an Organization representative advising him (b), the investigation was not conducted timely as required by Rule 15 of the Agreement, (c) the Carrier failed to provide a detailed witness list in the charge letter, and (d) Hearing Officer allowed the Carrier to present a witness telephonically. The Organization also contends that the discipline imposed was unwarranted and excessive.

Analysis

The Board sits as an appellate review forum in discipline cases. As such, it does not weigh the evidence *de novo*. The Board's function is not to substitute its judgment for that of the Carrier, nor decide this matter in accord with what the Board believes should have been decided had it been the Board's decision to make. Rather, the Board's inquiry is to determine whether sufficient evidence exists to sustain the discipline imposed by the Carrier. If there is sufficient evidence supporting the Carrier's decision, then the Board cannot disturb the penalty unless the record reflects that the Carrier's decision was unjust, unreasonable or so arbitrary as to constitute an abuse of discretion.

The Organization contends that the Carrier violated the Claimant's due process rights when it asked him to prepare his April 29, 2022 written statement. There was no evidence presented that the Claimant requested a representative of the Organization to

be present with him prior to or at the time he was asked to write his statement. For this reason, the Board finds no evidence to support this objection.

The Organization also contends that the Carrier violated Section 2 of Rule 15 when it unilaterally postponed the scheduled investigation. The relevant provision of the rule states:

The investigation shall be held at the city of employment within ten (10) calendar days of the date when notified of the offenses or held from service (subject to one postponement not to exceed an additional twenty (20) calendar days upon written request of the employee of his duly accredited representative).

The Carrier issued its Notice of Investigation on May 3 and scheduled the initial investigation for May 6. On May 5, the Carrier requested a postponement and rescheduled the investigation for May 16. Rule 15 (2) expressly allows either party one postponement not to exceed twenty (20) calendar days. In this case, the Carrier only requested one postponement which did not exceed twenty (20) calendar days. The Board overrules the Organization's objection finding no violation of the Agreement or due process.

The Organization also contends that the Carrier violated Rule 15 when it failed to identify the witnesses it intended to call at the investigation. In making this objection, the Organization referred generally to Rule 15 and did not cite to specific language. In considering this objection, the Board found this provision in Section 2 of Rule 15:

The Carrier must supply the Organization, five (5) days prior to the hearing, all documents to be used in any investigation.

The only requirement in Rule 15 regarding the evidence to be used at the hearing requires the Carrier to supply the Organization all documents to be used five (5) days prior to the hearing. There is no provision in Rule 15 that requires the Carrier to provide a list of intended witnesses. The Board overrules the Organization's objection on this point, finding no violation of the Agreement or due process.

The Organization also believes that the Carrier violated the Agreement and denied the Claimant's due process rights when it allowed a witness to testify telephonically. The Carrier called Mr. Lacoy, an employee of the clinic, to testify telephonically. The Claimant's union representative objected. But then, in support of the Claimant's case, the Organization called a witness to testify telephonically. In so

doing, the Organization undermined its objection to telephonic testimony. For this reason, the Board dismisses this objection.

Regarding the merits, upon review of the entire record, the Board finds sufficient evidence supporting the Carrier's findings that the Claimant engaged in the charges identified in the May 3, 2022 Notice of Investigation and that he violated the Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 6 - Equal Employment Opportunity and Prevention of Discrimination and Harassment in the Workplace and Rule 8 – Behavioral Expectations and Prohibited Behaviors. Because the Board finds that sufficient evidence exists supporting the Carrier's decision, the Board is without authority, on this record, to disturb the penalty assessed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of December 2024.