

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45440
Docket No. SG-48558
25-3-NRAB-00003-230481**

The Third Division consisted of the regular members and in addition Referee Sarah Miller Espinosa when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of A. Candelaria, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record; Carrier violated the current Signalmen’s Agreement, particularly Rule 57 when it issued 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 April 27, 2022. Carrier’s File No. 161825-BRS, General Chairman’s File No. 335-21, BRS File Case No. 5849, NMB Code No. 101 - Out-of-Service Discipline: Conduct.”

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 was a BRS Helper employed by the Carrier. While the Claimant was off-duty on or about November 22, 2021, he was arrested in Jersey City, New Jersey, and charged with aggravated assault with a deadly weapon, impersonating a public servant and possession of a weapon for unlawful purposes. He was arrested and incarcerated from approximately November 22, 2021 until November 30, 2021 and was absent from work during this time period. On or about November 23, 2021, the Claimant's wife emailed the Claimant's supervisor stating, "My husband Angel Candelaria was unable to make it to work today due to a serious family emergency...Angel has been detained until possibly Tuesday, 11/30. This was an unexpected matter, I hope that you can take in consideration that this is not the norm for Angel and he will fully explain." On or about November 24, 2021, the Claimant's wife again emailed the Claimant's supervisor stating, "Just following up on my previous email. Unfortunately we are still in the same situation with Angel...Please be advised that he will be out until possibly 12/1." During the Claimant's absence, he was paid for the Thanksgiving holiday on November 25 and 26, 2021. On or about December 1, 2021, the Claimant returned to work. On or about December 6, 2021, the Carrier was notified about the Claimant's arrest and/or incarceration via a report to its ethics helpline, after which the Amtrak Police Department began an investigation. That same day, the senior engineer asked the Claimant about the situation via phone, and the Claimant stated that he had been involved in a minor vehicle altercation. On or about December 7, 2021, the Claimant was placed out of service pending trial.

On or about December 17, 2021, the Claimant was given notice in writing to appear for a formal investigation. The Notice of Investigation stated in relevant part:

On December 6, 2021, Engineering Management received information from HR Investigations that a Helpline Report was received alleging that on November 22, 2021, BRS Helper Angel Candelaria was arrested in Jersey City, NJ, and charged with aggravated assault with a deadly weapon, impersonating a public servant, and possession of a weapon for unlawful purposes. As a result, Mr. Candelaria was arrested and jailed from November 22, 2021, to November 30, 2021. When communicating to Amtrak management about the reason for his absence during that time, Mr. Candelaria (and those on behalf of Mr. Candelaria) were dishonest, covering up his arrest, incarceration, the serious nature of the incident, and charges. It is also noted that during the time of his absence, while incarcerated, Mr. Candelaria's time was entered for pay for the Thanksgiving holiday on 11/25/21 and 11/26/21.

The investigation was rescheduled and held on April 27, 2022.

The Hearing Officer issued a determination on or about May 6, 2022, which found that the charges were proven, and on or about May 10, 2022, the Carrier provided written notice to the Claimant that he was assessed a disciplinary penalty of dismissal. The Organization filed a claim on the Claimant's behalf, challenging the Claimant's dismissal and seeking that the charges be dismissed and that the Claimant be made whole. The Carrier denied the claim.

The Carrier points to Amtrak's Code of Ethics and Standards of Excellence. Section V, Act with Integrity, states in relevant part, "Integrity means doing the right thing every day. It is a fundamental value to Amtrak. That means being transparent, trustworthy, and honest, fair in all that we do, and efficiently attending to your duties." Section V.A, Trust and Honesty, states in relevant part, "Trust and honesty are the hallmarks of ethical and fair business dealings. Always be honest and accountable for your actions. Using or taking for personal gain any funds...is dishonest and will not be tolerated." Section V.D, Follow the Rules, states in relevant part, "[Y]ou should follow the rules and comply with Company and departmental policies and rules as well as instructions, directions, and directives from supervisors and managers." Section V.E, Conduct, states in relevant part, "Activities or behaviors that compromise the safety, satisfaction, and well-being of our customers, the public or our fellow employees - such as rudeness, insubordination assault, intimidation, horseplay, and using profane or vulgar language - are unacceptable and will not be tolerated. Unacceptable behavior includes off-duty conduct that brings discredit to Amtrak."

The Carrier asserts that its Code of Ethics and Standards of Excellence provide the standards that all employees must follow to ensure a sustainable working environment and that the standards require employees to act appropriately, whether on or off-duty, to follow rules and to not conduct themselves in ways that cast the Carrier in a negative light. The Carrier emphasizes that the Claimant's statements from himself and his family regarding his absence from work, including that he had a serious family emergency and/or a minor vehicle altercation, were dishonest and that as such, the Claimant intentionally misled the Carrier about the true circumstances of his arrest, incarceration and absence from work. The Carrier also points out that the Claimant testified that he did not alert the Carrier that he was improperly paid for the Thanksgiving holiday. The Carrier maintains that the Claimant's misconduct not only affected the Carrier's reputation, as a non-employee reported it to the helpline, but it also affected the Claimant's ability to report for work, as noted in the Board's award in Third Division Award No. 44549. The Carrier cites several awards that have upheld

dismissal for first offenses related to trust and honesty (Third Division Award No. 42613, SBA 986/Award No. 238 and PLB 6312/Award No. 100). In response to the Organization's claim that the Claimant was not afforded a fair and impartial investigation by having a remote hearing, the Carrier asserts that an electronic hearing does not infringe upon an employee's ability to present witnesses, testimony or evidence. In response to the Organization's claim that the charging letter was vague, the Carrier maintains that the letter clearly identified the incident at issue. The Carrier requests that its dismissal of the Claimant be upheld.

The Organization argues that the incident that led to the dismissal of the Claimant held no bearing over the employee's work duties and was outside of the Carrier's jurisdiction. The Organization argues that the Carrier did not provide Claimant a fair and impartial investigation by holding a remote hearing. The Organization cites Rule 57 of the parties' Agreement and argues that the language of the charging letter was vague because it did not specify the rules or policies violated by the Claimant. The Organization maintains that the Carrier's decision to impose dismissal was arbitrary, capricious and an abuse of the Carrier's discretion and requests that the Claimant be reinstated and made whole for all losses associated with his dismissal.

The Carrier has the burden of proof to establish by substantial evidence the misconduct charged. After a careful review of the record, the Board is persuaded that the Carrier has met its burden. It is not disputed that the Claimant and his family advised Carrier management that he was unable to report to work for reasons other than his arrest and incarceration. The Claimant's wife wrote two emails to Carrier supervision stating that the Claimant was out of work due to a serious family emergency. Although the first email stated that the Claimant was "detained," it did not give the reason for detention. Additionally, when questioned by Carrier management after the ethics helpline notification, the Claimant stated that he was out of work due to a minor vehicle altercation. The true reason for his absence was neither a family emergency or "minor" incident. Additionally, it is not disputed that the Claimant did not report to work as scheduled on the dates for which he was incarcerated. Thus, the Carrier has met its burden and established by substantial evidence that the Claimant was dishonest regarding the reason for his absence and failed to report to work from November 22, 2021 through November 30, 2021.

Concerning the penalty of dismissal, the Carrier argues that off-duty misconduct that rises to the level of criminal charges and arrest constitutes conduct unbecoming of an employee and emphasizes the level of the dishonesty in which the Claimant engaged.

Therefore, considering the Claimant's short tenure of two years and the seriousness of his dishonesty, the Board concludes that the penalty of dismissal is supported.

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 13th day of February 2025.