

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45534
Docket No. SG-48781
26-3-NRAB-00003-240238

The Third Division consisted of the regular members and in addition Referee J. Warren Dent when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of J. Efrece, 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; account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal to the Claimant in connection with an Investigation held on March 1, 2023.” [Carrier File: 164319-D; General Chairman File: 217.22PH; BRS File: 6448; NMB Code: 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.

On November 30, 2022, Claimant Joshua Efrece, a two-year employee assigned as a Helper in the Carrier's C&S Department, was removed from service and notified to attend a formal hearing scheduled for December 2, 2022, to develop the facts and

determine his responsibility, if any, in connection with all circumstances related to the following:

On November 3, 2022, an anonymous complaint reported to the Helpline that on February 24, 2022 C&S Helper Joshua Efrece made jokes and played a song that was racially offensive. Additionally, on November 7, 2022 Deputy Chief Engineer forwarded a written complaint to HR Investigations which alleged that on February 24, 2022, while riding in a truck with Mr. Efrece and Mr. Sebra, Mr. Efrece played and recited the words “the n*ggers got me f*cked up” to a song he directed at Complainant which was disrespectful, offensive, racist, and degrading.

Mr. Efrece was interviewed on November 17 and November 22, 2022 by HR Investigations and denied ever using the words or playing such a song at work.

After three postponements, the formal hearing was held on March 1, 2023. During the hearing, Complainant Riley (Black African-American), a C&S helper, testified that, on February 24, 2022, he was riding in the back seat of a company truck driven by Mike Sebra (Caucasian). The Claimant, seated in the front passenger seat, turned toward him, pointed, and recited the lyrics to the song he was playing over the truck’s speakers, “Yeah, these n*ggas got you f*cked up, D.” Mr. Riley further testified that he found the Claimant’s actions disrespectful, degrading, offensive, and racist, and that they made him feel like “less of a man, like I got no voice as an African-American in [t]his company.” Mr. Sebra, the driver of the truck that day, testified that he recalled “the Claimant connecting his phone to the Bluetooth audio in the truck and playing an explicit song containing the N-word and reciting it.” When asked by the Charging Officer, “...if he heard the Claimant use the word “N*gger” at work?”, Mr. Sebra responded, “Yes.”

Carrier Witness Castiglia entered into evidence pertinent parts of Amtrak’s Anti-Discrimination and Anti-Harassment Policy, which strictly prohibits harassment - verbal, physical, written, or visual conduct that offends, belittles, denigrates, or shows aversion to a person or group - and activities or behaviors that compromise the safety, satisfaction, and well-being of our fellow employees. He also cited relevant sections of Amtrak’s Code of Ethics and Standards of Behavior, which provides that discrimination or harassment of any kind by our employees toward our customers, fellow employees, vendors, or contractors violates our values and will not be tolerated. The complete HR Investigation report was entered into the hearing record as Exhibit

D. The report concluded that there was “...sufficient evidence to support that Mr. Effrece played a song directed at Complainant with lyrics to the effect of, “n*ggas got me f*cked up,” and that Mr. Effrece repeated these lyrics in front of Complainant and Mr. Sebra, as Complainant alleged.”

Based on the evidence adduced at the hearing and by letter dated March 8, 2023, Claimant Effrece was permanently dismissed from the Carrier’s service for violating Amtrak’s Anti-Discrimination and Anti-Harassment Policy and its Code of Ethics and Standards of Behavior. The Organization filed the instant claim on Claimant’s behalf, challenging the Carrier’s assessment of discipline. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained because the Carrier failed to conduct a fair and impartial Investigation, failed to meet its burden of proof, and failed to follow its progressive discipline policy, instead arbitrarily imposing a dismissal that was excessive for the conduct at issue. The Carrier, on the other hand, argues that the instant claim should be denied because the Claimant was afforded a fair and impartial Investigation, substantial evidence established the Claimant’s guilt, the Organization’s arguments lack merit or mitigating value, and the discipline imposed was commensurate with the proven offense and not arbitrary, capricious, or excessive.

Unable to achieve a mutually agreeable resolution to the dispute, the case is now properly before this Board for final and binding adjudication.

The Board’s review of the record finds no material procedural errors. The Claimant was afforded his Agreement due-process rights throughout the proceeding. The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Accordingly, it is not our function to substitute our judgment for the Carrier’s and decide the matter as we might if the decision were ours. Instead, our inquiry is whether there is substantial evidence to support the discipline assessed. Prior arbitral decisions have defined substantial evidence as “...such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Here, our review of the testimony and evidence finds it substantially supports the Carrier’s finding that the Claimant violated the cited Policies. The Claimant did not testify at the hearing, and the Organization did not call any witnesses or submit any documents to rebut the Carrier’s case.

Having established the Claimant’s guilt, we turn to the level of discipline imposed. It is well established that we may overturn a Carrier’s discipline assessment only if it is shown that the Carrier acted on insufficient evidence or that its assessment

was excessive, arbitrary, or capricious. The misconduct demonstrated here is comparable to that which prior Awards have found to be a legitimate basis for termination, even on the first offense. Considering all the facts and circumstances of this case, including the Claimant's short tenure, the Board does not find that the Carrier's discipline assessment lacked an evidentiary basis or was otherwise harsh or excessive. Therefore, we will not disturb the Carrier's decision. Accordingly, the claim will be 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 27th day of January 2026.