

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45535
Docket No. SG-48850
26-3-NRAB-00003-240478

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. Alves, III, 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 without providing him a fair and impartial investigation and without meeting its burden of proving the charges in connection with an Investigation held on February 1, 2023. Carrier's File: 175-22NY; General Chairman's File: 20238; BRS File: 6453; 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.

At all times relevant to this dispute, Claimant Joseph Alves - a 25-year Carrier employee - was assigned as a Helper in the Carrier's C&S Department. On December 3, 2022, the Claimant was removed from service and, by correspondence of that date, directed to attend a formal investigation on December 23, 2022, to develop the facts and determine his responsibility, if any, in connection with any circumstances related to the following:

It is alleged that on November 30, 2022, Engineering Management discovered that on September 1, 2022, BRS Helper Joseph Alves displayed threatening and violent behavior towards fellow Amtrak employee Zachary Credit when he (Alves) pulled a knife on Mr. Credit at MP 170.4 Condos interlocking. Mr. Alves was angry that he could not find his keys and believed Mr. Credit had something to do with hiding them.

After one postponement, the hearing was held on February 1, 2023. During the Hearing, C&S Helper Zachary Credit testified that, on September 1, 2022, the Claimant was missing his railroad keys and believed that he (Mr. Credit) or fellow employee Gus Bonilla had them or knew where they were. When told they did not have the keys, Mr. Credit stated that the Claimant "pulled a razor knife out in a threatening manner. I spoke up, and I told him, 'Joe, I'm back to the corner. Don't pull a knife on me.' He folds up the razor knife, pulls out a four-inch buck knife, says, 'That's not pulling a knife. This is. Now where are my keys?' He eventually put the knife away, continued working." In his testimony, Mr. Bonilla stated that he "...visually saw Joe Alves pull a box cutter on Zachary Credit. I didn't hear the dispute, but noticed Joe pull a knife out to try and threaten Zachary Credit. The knife was placed back in Joe's pocket, and nothing was said after."

Carrier Witness Nolan entered the Code of Ethics and Standards for Behavior into the record as Hearing Exhibit F. It states, in pertinent part, that "Threats and acts of violence affect everyone's ability to do their job safely. Amtrak will not tolerate intimidating, threatening, or hostile behavior." The Workplace Violence Prevention Policy was entered into the record as Hearing Exhibit G. It states, in relevant part, that "Amtrak is committed to providing a safe and secure workplace free of threats or acts of violence...Firearms, explosives, knives, and other weapons must never be in your possession at work or on property used for Amtrak business, unless authorized by Amtrak. Workplace violence may include threats and assault."

By letter dated February 13, 2023, Claimant Alves was notified that, based on the evidence adduced at the hearing, he was permanently dismissed from the Carrier's service for violating Amtrak's Code of Ethics and Standards of Behavior, specifically policies of Workplace Safety, Workplace Violence and Security, Attending to Duties, Follow the Code, and Conduct as well as the Amtrak Workplace Violence Prevention Policy. 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, substantial evidence supports the charges.

Having established the Claimant's guilt, we turn to the level of discipline imposed. Based on the totality of the record, the Board concludes that the Claimant's conduct warrants severe discipline. However, in light of the Claimant's tenure, the absence of active discipline on his record, and the lack of record evidence showing a propensity for this type of behavior, the Board concludes that permanent dismissal is excessive. A long-term suspension, without backpay, will, in our opinion, send the corrective message to the Claimant that he must comply with the Carrier's Rules and

Policies. Accordingly, the Board will convert the Claimant's dismissal to a lengthy suspension, reinstating him to service with seniority rights unimpaired, but without pay for the time out of service. The Board urges the Claimant to take whatever steps are necessary to acquire the skills needed to address workplace disagreements without resorting to potentially threatening comments or actions. The Claimant's reinstatement will be subject to his successful completion of the usual return-to-work testing and qualification requirements.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 27th day of January 2026.