

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45543
Docket No. 48783
26-3-NRAB-00003-240330

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Mississippi Export Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. E. Maye, by letter dated March 7, 2023, for alleged violation of GCOR Rule 1.6 – Conduct in connection with being dishonest during his employment interview on August 1, 2022 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File HM-23XII-MSE MSE).
2. As a consequence of the violation referred to in Part (1) above:

‘ . . . the Organization submits a claim requesting that the Carrier, Mississippi Export Railroad, overturn its denial of Claimant Eric Maye’s termination (sic) and that Claimant be awarded compensation equal to the number of straight time hours lost during his dismissal and restoration of any and all benefits and leave days accumulated during his spotless employment. A monetary remedy is necessary to compensate Claimant for the loss of work opportunity suffered, and to enforce the clear terms of the agreement.’”

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 August 1, 2022, Claimant Eric Maye interviewed for a position with the Mississippi Export Railroad (MSE). The resume Claimant provided did not indicate that he had ever worked in law enforcement, although when he had applied for the same position in 2021, his resume indicated that he had worked in law enforcement in Moss Point, Mississippi. During the interview, the MSE Superintendent asked Claimant why he had left the Moss Point position, and Claimant allegedly answered that the pay was too low. Claimant was then hired as a track laborer.

On February 28, 2023, Claimant was assigned to perform track work at one of MSE's customer facilities, but he was not allowed to enter the customer property. Claimant's foreman informed the Superintendent that Claimant was banned from the customer property because Claimant had failed a drug test when he worked for a contractor at the customer facility. The Superintendent later confirmed with a customer security officer that Claimant was not allowed on the customer property.

This information prompted the Superintendent to research Claimant's work history, and he discovered that Claimant had been fired from the Moss Point Police Department in 2022 after being arrested for embezzlement, that he had been fired from the Gautier, Mississippi Police Department in 2018 for embezzlement, and that he had been forced to resign from the Moss Point Police Department in 2019 after being decertified by the Mississippi Board on Law Enforcement Officer Standards and Training.

The Superintendent met with Claimant to discuss the matter on March 1, 2023, at which meeting the Superintendent informed Claimant that he was disqualified from his track laborer position due to Claimant being banned from working at the customer facility. The Superintendent also gave Claimant the opportunity to discuss the reason he had left his law enforcement job, during which Claimant admitted that charges were still pending regarding his time with the Gautier Police Department.

After the Carrier determined that Claimant's statements were inconsistent with information found in news articles about his dismissal from law enforcement positions, by letter dated March 7, 2023, Claimant was dismissed from service for violation of GCOR 1.6, Dishonesty. Claimant requested a formal investigation, and by notice dated March 15, 2023, he was directed to attend a hearing to determine whether he was dishonest in both the August 1, 2022, initial interview, and in the March 1, 2023, meeting.

The investigation held April 5, 2023, at which the Superintendent testified regarding his initial interview with Claimant, as did two other Carrier employees who were present at the interview. Both of the other Carrier employees confirmed that Claimant had said during his initial interview that he had left the Moss Point Police Department because the pay was too low. The Superintendent also testified about the March 1, 2023, interview, as did one of the other Carrier employees. After the hearing, by letter dated April 11, 2023, Claimant was notified that the dismissal was upheld.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization challenges the discipline assessment, contending that the Carrier failed to prove the charges against Claimant, and that the Carrier did not have grounds for dismissal. It states that the Carrier issued the decision as a formality, and that a determination on Claimant's guilt had already been reached at the time of his dismissal on March 7, 2023. The Organization cites prior awards for the principle that the Carrier bears the burden of proving the charges in a discipline case, and it submits that the Carrier had not met that burden here.

Regarding the charge that Claimant violated GCOR 1.6 by being dishonest during his employment interview, the Organization argues that the Superintendent had prior knowledge of Claimant's law enforcement background due to his possession of Claimant's earlier resumes which listed the Moss Point position. It notes that even then, the Carrier did not find it necessary to conduct a background check on Claimant, and that he then performed his duties for a year after having passed a pre-employment drug screen. The Organization posits that the Carrier's handling has more to do with image control than Claimant's life prior to the railroad employment.

The Organization also asserts that, even if the Carrier had met its burden of proof, the Carrier's decision to dismiss Claimant is harsh, excessive and unwarranted

on the facts of this case. It cites prior awards which have reduced discipline assessments where discipline was assessed only as punishment rather than for correction of behavior, and it states that the Carrier arbitrarily ignored principles of corrective discipline in assessing an excessive punishment. The Organization concludes that the Carrier's assessment was arbitrary and capricious, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment, stating that the record contains substantial evidence to support the finding of guilt. Citing articles which reported on the charges, it asserts that there is no question that Claimant was dishonest during his initial interview when he told the Superintendent and the other two Carrier managers that the reason he had left the Moss Point position was only because of low pay, when in fact he had been dismissed was due to criminal matters.

With respect to the discipline assessment, the Carrier states that there is no basis to question its judgment. It avers that Claimant's dishonesty is a serious infraction, conduct which breaches the trust necessary in the employee-employer relationship. It cites prior awards which have upheld dismissal for such conduct, regardless of an employee's tenure or prior record. The Carrier states that there was nothing arbitrary or capricious about the assessment here, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Here, we believe the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant was dishonest during his August 1, 2022, interview regarding the reason he left the Moss Point law enforcement position. All three of the Carrier managers who were at the interview confirmed that Claimant said he left the police job only because of low pay, but the evidence subsequently discovered establishes that his termination from the police force was due to criminal matters. Although the Organization objects to the Carrier's inclusion in its submission of a January 2024 article which reported on Claimant's eventual guilty plea, as that document was not exchanged on the property, even when we disregard that document,

the other evidence is more than sufficient to meet the Carrier's burden of proof. And while the Organization also objects that there was no mention in the dismissal confirmation letter of Claimant's dishonesty during the March 1, 2023, interview, both the notice of investigation and the confirmation letter address Claimant's dishonesty during the hiring session, and we have no reason to overturn the Carrier's determination that Claimant was dishonest then.

Having found that the rule violation was established, we turn to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. It has been held in many prior awards that dishonesty breaks the bonds of trust necessary in the employment relationship, and that it is grounds for dismissal, even for a first-time offense. On this record, we cannot find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

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.