

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

NOV 9 2014
PENNSYLVANIA SECRETARIAT
HARRISBURG

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR**

Case No. 286

STATEMENT OF CLAIM:

Appeal of the discipline imposed upon Mr. Anthony Sessa on August 31, 2009.

FINDINGS:

By notice dated June 26, 2009, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier's Standards of Excellence, Workplace Violence Policy, and NORAC Operating Rules when he allegedly cursed and threatened an ET Gang Foreman and the Foreman's mother on April 24, 2009; and on April 29, 2009, allegedly told co-workers that he had gone to the Foreman's house with the intent of physically attacking the Foreman. The investigation was conducted, after a postponement, on August 14, 2009. By letter dated August 31, 2009, the Claimant was notified that he had been found guilty of violating the Carrier's Standards of Excellence relating to Attending to Duties, Professional and Personal Conduct -- teamwork and conduct, and that the charges relating to the Workplace Violence Policy and NORAC Operating Rules had not been sustained. This letter further notified the Claimant that he was being assessed a ten-day suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim, but reduced the suspension from ten days'

to five days' duration.

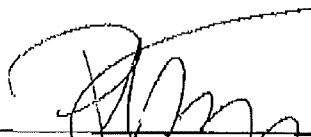
The Carrier contends that the instant claim should be denied in its entirety because the investigation must be deemed timely in light of the fact that the Carrier initially was notified of the allegations by an anonymous letter and its police had to investigate the incident before any charges could be made, because substantial evidence in the record supports the finding that the Claimant was guilty of violating the Carrier's Standards of Excellence by using profanity during a verbal altercation with the Foreman, and because the discipline imposed was not an abuse of the Carrier's discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to conduct a timely hearing in this matter, because the testimony of the accusing witness was not credible, because the Claimant merely repeated the Foreman's verbal assaults, because the Carrier failed to establish that the Claimant violated the Carrier's Standards of Excellence, and because the Foreman's own language during the incident in question was unprofessional.

The parties being unable to resolve their dispute, this matter came before this Board.


This Board finds that the Carrier has failed to meet its burden of proof on the merits in this case. Therefore, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral-Member



ORGANIZATION MEMBER
DATED: 12/9/14



CARRIER MEMBER
DATED: 12/9/2014