

NATIONAL MEDIATION BOARD
WASHINGTON, DC

SPECIAL BOARD OF ADJUSTMENT 986

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) – NORTHEAST CONFERENCE (“CARRIER”)

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

NMB Case No. 292
Employee: Jaroslaw Bolbotowski

Neutral Member: Barbara Zausner
Carrier Member: Richard Palmer
Organization Member: Jed Dodd

STATEMENT OF CLAIM

1- The Carrier’s discipline (dismissal in all capacities) of Jaroslaw Bolbotowski issued by letter dated May 16, 2010 in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ and Workplace Violence Policy was excessive (System File NEC-BMWE-SD-4949D).

2- As a consequence of the violation referred to in Part 1 above, Mr. Bolbotowski shall be reinstated to full service immediately with full seniority unimpaired and made whole for all wages, benefits and seniority lost for the time of his termination and for the discipline to be expunged from his record.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant in this case, Jaroslaw Bolbotowski, was assigned as an ET Lineman at Morrisville, PA. On April 8, 2011 the Claimant was attending the Safety Breakfast Meeting at the Omega Diner & Café in New Brunswick. The Claimant encountered Gregory Gawrysiak in the restroom and created a threatening and/or hostile environment when he verbally threatened, used profane/vulgar language, and physically assaulted Mr. Gawrysiak when he pushed him against the wall and grabbed him by the throat and stated, "Are you trying to f—with me? Because if you are I'll f—with you." The Claimant was removed from service on April 8, 2011 and by letter dated April 20, 2011, notified to appear for an investigation on May 3, 2011, for his alleged violation of Amtrak's Standards of Excellence governing Safety, Trust and Honesty, Professional and Personal Conduct (Teamwork) and (Conduct), and Amtrak's Workplace Violence Policy, P/I Number 3.12.0. Based on the

evidence presented at the investigation, the Claimant was found guilty of the charges and by letter dated May 16, 2011, was assessed the discipline of dismissal in all capacities effective immediately. By letter dated July 13, 2011, the charges concerning Trust and Honesty were removed because the Claimant admitted his guilt of the offenses for which he was charged.

The Carrier points out that the Claimant admitted that he verbally threatened, used profane/vulgar language, and physically assaulted his co-worker, Mr. Gawrysiak on April 8, 2011.

The Carrier cites the extensive record corroborating the actions taken by the Claimant. These actions, the Carrier contends, violate the Carrier's Workplace Violence Policy and Standards of Excellence. The Carrier has a zero tolerance for threats and any form of violence in the workplace and has a responsibility to ensure that its workplace is free from acts or threats of violence.

The Organization argues the Claimant was provoked to lose his temper by rumors being spread about him concerning an earlier incident involving Gawrysiak. The Organization cites the Claimant's unblemished record. It claims the Carrier failed to consider mitigating circumstances and that dismissal is inappropriate. The Organization does not dispute that the Claimant's actions were inappropriate. It points out the

Claimant is remorseful and willing to undergo counseling for anger management.

A majority of the Board concludes that the Claimant should be offered reinstatement without back pay and conditioned on his participation in an anger management program. This decision is based on the mitigating circumstances asserted by the Organization.

The Board recognizes the significance of the Carrier's Workplace Violence Policy and Standards of Excellence. Nevertheless, each case has to be decided on its particular facts and circumstances. The Claimant was forthright with regards to the incident from the time he was accused and is sincerely apologetic. He acknowledges the seriousness of his behavior and is committed to dealing with his anger management issues.

AWARD

The Claim is sustained in part and denied in part. Claimant shall be returned to service without back pay but with seniority and all other benefits intact. His reinstatement is conditioned on his participation in an anger management program.



Barbara Zausner, Neutral Board Member
January 23, 2012



For the Carrier
Richard F. Palmer, Director – Labor Relations



For the Organization
Jed Dodd, General Chairman