

**BEFORE SPECIAL BOARD OF ADJUSTMENT 986**

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

**Case No. 302**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal in all capacities, effective immediately) of Mr. M. Wood, issued by letter dated January 17, 2013, in connection with alleged violations of various sections of the Carrier’s Standards of Excellence, the Carrier’s Workplace Violence Policy and of NORAC Rules B, D, E, N and S was harsh, excessive, arbitrary, capricious and without just cause (System File NEC-BMWE-SD-5126 D).
2. As a consequence of the violation referred to in Part 1 above, Mr. Wood shall be immediately reinstated to full service with all benefits and seniority rights unimpaired, have his record expunged of the charges and discipline leveled against him and be compensated for all wage loss suffered.”

**FINDINGS:**

By letter dated November 5, 2012, the Claimant was directed to attend a formal investigation on a charge that the Claimant had violated the Carrier’s Standards of Excellence, its Workplace Violence Policy, and NORAC Rules B, D, E, N and S when he allegedly engaged in behavior toward a fellow employee that was physical, threatening and intimidating, and when he engaged in combative behavior with a supervisor. The investigation was convened, after a postponement, on December 7, 2012, and then, after a recess, it was reconvened and completed on January 7, 2013. By letter dated January 14, 2013, the Claimant was notified that he had been found guilty as charged, and by letter dated January 17, 2013, the Claimant was notified that he was being dismissed from the

Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record supports the finding that the Claimant was guilty as charged, because the Claimant was obligated to comply with the instructions of his supervisor and then grieve the matter later if he felt that he had been mistreated or that his Agreement rights had been violated, because there is no merit to the Organization's arguments, because the Carrier has zero tolerance for any form of violence in the workplace and a responsibility to ensure that its workplace is free from acts or threats of violence, and because the Claimant's dismissal was warranted and appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier arbitrarily disciplined the Claimant even though the evidence does not show that any violation occurred, because the hearing officer's own findings demonstrate that there was no intentional verbal or physical conduct affecting the workplace on the part of the Claimant, because the Claimant did not intentionally make contact with or otherwise threaten the other employee involved in the incident, because the Carrier subjected the Claimant to disparately harsh treatment in that it did not charge or discipline that other employee in connection with her equal or greater culpability for the incident, because the Carrier arbitrarily disciplined the Claimant in connection with the subsequent incident involving a supervisor, because there was no corroboration of the supervisor's allegations, and because the Carrier failed to meet its burden of proof as to this second incident.

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

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of conduct unbecoming an employee when he engaged in physical and threatening behavior towards two Carrier employees on October 31, 2012. The record reveals that the Claimant originally had an altercation with Ms. Nunes and threatened her and told her that he was going to get her. The Claimant pushed toward Ms. Nunes and backed her up in a threatening manner. Supervisor Traina told the Claimant to leave the area. The record reveals that as the Claimant left the parking lot, he passed Supervisor Traina in a threatening manner. Traina had to get out of the way of the Claimant's car.

All of those actions on the part of the Claimant violated several Carrier rules which protect against a violent and hostile environment and also require that employees act in such a manner that they are not offensive to other employees and supervisors.

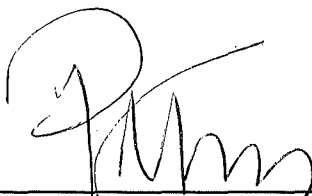
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was terminated for his wrongdoing. Given the seriousness of the offense and the fact that at the argument in this case the Claimant admitted that he "should not have done what he did," this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's

employment. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.



**PETER R. MEYERS**  
Neutral Member



**ORGANIZATION MEMBER**

**DATED:** 2/9/14



**CARRIER MEMBER**

**DATED:** 7/7/14