

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

1. The discipline (dismissal) imposed upon Mr. V. Wallace by letter dated October 25, 2013 for his alleged violations of Amtrak Standards of Excellence sections entitled: Safety, Attending to Duties and Professional and Personal Conduct and Amtrak Electrical Operating Instructions AMT-2: Instructions 2.101, 2.102 and 6.404 was harsh, excessive, arbitrary and capricious (Carrier’s File NEC-BMWE-SD-5238D).
2. As a consequence of the violation referred to in Part 1 above, Claimant Wallace shall be reinstated to service with all rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

By letter dated October 2, 2013, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence and Electrical Operating Instructions in connection with a September 14, 2013, incident in which the Claimant allegedly was negligent in failing to extend his existing clearance or make the proper clearance for the assigned task, resulting in an injury to a co-worker and the placement of trainees at risk of loss of life and/or serious injury. The investigation was conducted, as scheduled, on October 10, 2013. By letter dated October 25, 2013, the Claimant was notified that he had been found guilty as charged, and 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 responsible for the safety of his trainees but he failed to properly direct them; because the discipline imposed was appropriate in this case in light of the Claimant's negligence, his prior record, and the proven safety violations; and because there is no basis upon which to view the discipline of dismissal as 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 meet its burden of proof in this matter, because the Carrier failed to prove that the Claimant did not comply with the cited rules, and because the discipline imposed is not corrective in nature but instead improperly serves no purpose but to punish.

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 violating the Carrier's Standards of Excellence governing safety and professional and personal conduct, as well as Electrical Operating Instructions, when he failed to fully warn Employee Andujar of the energized transformer on the signal bridge at Glenolden. AMT-2 Instruction 6.404 states that an employee who has obtained a clearance must direct the attention of each person to the location of the energized circuits

in proximity to the work that they will be performing. The record reveals that the Claimant did not specifically direct the attention of the trainees with whom he was working to the energized transformer as required by the instruction.

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 has been employed by the Carrier for over thirty-three years. It is clear that he made some errors in terms of not fully advising the trainees with whom he was working that there were energized transformers in the area. However, the record also reveals that the other trainee, Mr. Anderson, was aware that he should not go near the transformers. The testimony of the trainees does differ from each other. Given the length of the Claimant's seniority, this Board must find that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant's employment. Although the Claimant did engage in some safety violations, this Board finds that his violations were not sufficient to support the termination of his lengthy career with the Carrier. Consequently, we order that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension. This Board also orders that the Claimant be issued a final warning that any future safety violations will lead to his dismissal. Moreover, the Claimant shall be afforded retraining so that, in the future, he takes more careful action when making assignments to other employees.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension. The Claimant shall also be issued a final warning with respect to future safety violations. Finally, the Carrier has the right to require the Claimant to be retrained before assigning him to work on the property.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER**DATED:** MARCH 18, 2015

CARRIER MEMBER**DATED:** MARCH 18, 2015 @ 5:02 PM