

**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. 307**

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

1. The Carrier’s discipline (dismissal) of Mr. C. Kube, issued by letter dated August 8, 2014, in connection with his alleged violation of its ‘Standards of Excellence’ (related to ‘Safety’ and ‘Professional and Personal Conduct’) as well as its ‘Workplace Violence’ Policy, was arbitrary, unjust, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-5305D AMT).
2. As a consequence of the violation referred to in Part 1 above, Mr. Kube shall be returned to service immediately and granted all other relief due under the agreement.”

**FINDINGS:**

By letter dated June 25, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence on Safety and on Professional and Personal Conduct, as well as the Carrier’s Workplace Violence Policy, in connection with an incident that occurred on June 5, 2014, during which the Claimant allegedly threatened another employee. The investigation was conducted, after two postponements, on July 30, 2014. By letter dated August 6, 2014, the Claimant was notified that he had been found guilty as charged, and by letter dated August 8, 2014, the Claimant was informed 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 Carrier has zero tolerance for threats and any form of violence in the workplace, because there is no merit to the Organization's procedural arguments and substantive positions, because there is no basis for reducing or removing the discipline assessed especially in light of the Claimant's discipline record, and because the discipline imposed was warranted, appropriate, and commensurate with the serious nature of the proven charges. The Organization contends that the instant claim should be sustained in its entirety because the Claimant was not the aggressor and was not out of control, because the interaction was restarted by the other employee after it initially was halted, because the Carrier did not meet the heightened burden of proof that applies in this case involving serious charges of moral turpitude, and because the discipline imposed was inappropriate.

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 several Carrier rules relating to conduct when he verbally threatened a co-worker by stating that he would cut his throat on June 5, 2014. Although the Claimant denied making the statement, two Carrier witnesses testified that he specifically made that statement when he was having a verbal altercation with his co-worker. Moreover,

when the Claimant was taken into custody by the police, two knives were found on his person, which he apparently was not allowed to be carrying while he was at work.


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 guilty of violating rules relating to workplace violence and making threats. The Carrier has a long-standing zero tolerance for that type of behavior. Moreover, the Claimant has a very poor service record, which includes a five-, ten-, and thirty-day suspension. Given the previous disciplinary background of the Claimant, coupled with the violation of the workplace violence rule for which the Carrier has zero tolerance, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant in this case. Therefore, the claim will be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**  
**DATED:** 12/28/15

  
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**CARRIER MEMBER**  
**DATED:** December 18, 2015 @ 10:28 am