

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 308

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

1. The dismissal of Foreman D. Wilson for violation of Amtrak’s Standards of Excellence, Anti-Discrimination and Anti-Harassment and Computer and Security and Usage policies in connection with alleged inappropriate utilization of computer access was arbitrary, unwarranted, excessive, and in violation of the Agreement (System File NEC-BMWE-SD-5295D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant Wilson will be reinstated to service with all benefits and seniority rights unimpaired and compensation for all wage loss suffered and his record will be cleared of the charges level in this instance.”

FINDINGS:

By letter dated March 17, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence, Anti-Discrimination and Anti-Harassment Policy, and Computer Security and Usage Policy by allegedly viewing sexually graphic material on a Carrier computer while on duty during the period between January and March 2014. The investigation was conducted, after three postponements and *in absentia*, on May 29, 2014. By letter dated June 12, 2014, 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 the Claimant was given a fair and impartial hearing, because substantial evidence in the record supports the finding that the Claimant was guilty as charged, and because the discipline imposed was warranted, appropriate, and commensurate with the serious nature of the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Carrier did not afford the Claimant a fair and impartial investigation and denied the Claimant due process by failing to postpone the proceeding when the Claimant had a valid reason for not attending the investigation, and because the discipline imposed was arbitrary, unwarranted, and excessive.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was given several opportunities to postpone the investigation; and after several postponements, the Claimant still did not appear at the actual investigation. In addition, the Organization representative did not appear either, even though the Carrier indicated that there was no good reason for another postponement. This Board has reviewed the hearing record, and we find that all of the Claimant's due process rights were guaranteed throughout the proceeding.

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 acted in

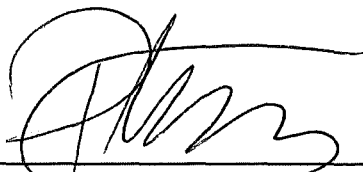
violation of the Carrier's rules when he was viewing pornographic material and other improper websites while he was on duty under pay. The Claimant's actions violate a number of Carrier rules that prohibit such activity.

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 a very serious rule violation. This Board recognizes that the Claimant has accumulated twenty-three years of service with the Carrier. However, the length of service of the Claimant does not override the Carrier's desire to have a workplace free of employees viewing pornographic materials which may be seen by others and which also waste time and constitute theft of time from the Carrier. This Board does not find that the Carrier's action in terminating the Claimant for his violation of this rule is unreasonable, arbitrary, or capricious. Therefore, for all of the above reasons, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 12/28/15



CARRIER MEMBER

DATED: December 18, 2015 @ 10:40 am