

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. 310

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

1. The dismissal of Mr. P. McNeil for the alleged violation of Amtrak’s Standards of Excellence, Sections ‘Trust and Honesty’, ‘Professional and Personal Conduct’, and ‘Attending to Duties’; Amtrak’s Policy/Instruction Number 11.54.0, Highway Vehicle Utilization and Control Policy, Section ‘3.2 Personal use of Highway Vehicles’ was unwarranted, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-5316D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. McNeil 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:

By letter dated June 12, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence on Trust and Honesty, Professional and Personal Conduct, and Attending to Duties, as well as the Carrier’s Policy on Vehicle Utilization and Control, in connection with the Claimant’s alleged unauthorized use of a Carrier vehicle on May 14, 2014. The investigation was conducted, after three postponements, on November 13, 2014. By letter dated November 20, 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 substantial evidence in the record supports the finding that the Claimant was guilty as charged, because there is no merit to the Organization's procedural arguments and substantive positions, because there are no mitigating circumstances that require a reduction or removal of the discipline assessed, because the Claimant's discipline record demonstrates that he has not learned from the previous imposition of discipline for the same offense, and because the discipline imposed was appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a fair and impartial hearing in that it failed to produce the video evidence upon which the Carrier based its findings, 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 excessive, unwarranted, on the basis of unproven charges, and in violation of the Agreement.

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 rules when he, without authorization, used a Carrier vehicle and engaged in activities in the vehicle that caused it to catch on fire on May 14, 2014. The record reveals that no other individual could possibly have been involved in the fire that caused the vehicle to be totally destroyed. Moreover, there is no question

that the Claimant did not have authorization to utilize that vehicle on the date in question.

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 found guilty of a very serious rule violation. This Board recognizes that the Claimant has provided services for the Carrier for over fifteen years. However, the wrongdoing in this case is so severe, plus the Claimant previously had been involved in a similar incident in which he received a ten-day suspension, that this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it moved to terminate the Claimant's employment for his wrongdoing in this case. Therefore, 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 @ 10⁵⁰ am