

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. 311

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

1. The Carrier’s discipline (termination) of Mr. K. Dent, issued by letter dated December 10, 2014, in connection with his alleged violation of the Carrier’s ‘Standards of Excellence’ and ‘Anti-Discrimination and Anti-Harassment Policy’ when he engaged in unwanted, on-duty ‘sexual conduct’ towards a co-worker on unspecified dates between late 2013 and late 2014, was imposed in violation of Mr. Dent’s rights under the Agreement (System File NEC-BMWE-SD-5331D AMT).
2. As a consequence of the violation referred to in Part 1 above, Mr. K. Dent shall receive the remedy prescribed under Rule 74(c)(1) of the Agreement.”

FINDINGS:

By notice dated December 10, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence on Professional and Personal Conduct, as well as the Carrier’s Anti-Discrimination and Anti-Harassment Policy, in connection with the Claimant’s alleged engagement in several incidents of unwanted sexual conduct involving another Carrier employee during December 2013, early 2014, and August 2014. The investigation was conducted, after a postponement, on January 29, 2015. By letter dated February 9, 2015, 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 or mitigating value to the Organization's assertions, and because the discipline imposed was commensurate with the proven offenses. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its heightened burden of proof, because the accuser was not credible, because the alleged incidents occurred over a two-year period and were not identified by precise date and were not reported to anyone, because there is no discipline-worthy evidence, and because the Claimant should not have been discharged after EEO recommended counseling.

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 engaging in repeated harassment and unwelcome sexual conduct toward a fellow employee. The record is filled with evidence of the Grievant's wrongdoing, which is supported with corroborating evidence from other individuals.

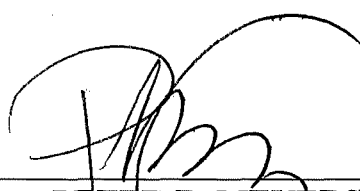
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its


actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case continued to engage in the wrongful behavior even after he was charged with this initial violation. He apparently was unable to stop harassing this fellow employee. The Carrier has a zero tolerance for this type of behavior. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated this long-term employee for the egregious behavior in which he engaged. Moreover, the Claimant's previous disciplinary record over his past employment is not stellar. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER
DATED: 9/1/16

CARRIER MEMBER
DATED: September 4 2016 4:30 pm est