

**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. 315**

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

1. The Carrier’s discipline (dismissal in all capacities, effective immediately) of Mr. M. Higgins, issued by letter dated May 20, 2015, in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ pertaining to the sections entitled ‘Trust and Honesty’, ‘Attending to Duties’ and ‘Professional and Personal Conduct’, as well as P/I Number 11.54.0 Highway Vehicle Utilization and Control policy was excessive and unwarranted (System File NEC-BMWE-SD-5348D AMT).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, Mr. M. Higgins shall be reinstated to the Carrier’s service with all benefits and seniority rights unimpaired, shall have his personnel record cleared of the charges leveled against him and shall be compensated for all wage loss suffered.”

**FINDINGS:**

By notice dated December 11, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence governing Trust and Honesty, Attending to Duties, and Professional and Personal Conduct, as well as the Carrier’s Highway Vehicle Utilization and Control Policy in connection with a November 26, 2014 incident in which the Claimant was arrested while operating a Carrier vehicle. The investigation was conducted, after two postponements, on May 12, 2015. By letter dated May 19, 2015, the Claimant was notified that he had been found guilty as charged. By letter dated May 20, 2015, the

Claimant was notified 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, because leniency is the prerogative of the Carrier, and because the penalty of discharge is commensurate with the proven offense. The Organization contends that the instant claim should be sustained in its entirety because there was no cause to discipline the Claimant, because the Claimant should have been given a Drug and Alcohol Waiver and placed in the EAP due to the mitigating circumstances in this matter, and because the discipline imposed was harsh, unusual, and capricious.

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 violated the Carrier's rules when he engaged in the unauthorized use of a Carrier vehicle for non-Carrier business while off duty. In addition, he was arrested while operating that Carrier vehicle and charged with a DUI. The Claimant admitted that he took the truck; and he also admitted that at the time of the arrest, he was under the influence. The Claimant states that he made a mistake. The engaging of the unauthorized use of a Carrier vehicle is, as the Carrier argues, tantamount to theft.

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 engaged in very serious wrongdoing. Theft and dishonesty are often dismissible offenses, even on the first occasion. The Claimant here had a very short service with the Carrier. There is no basis whatsoever to give him the second chance that he requests. This Board finds that the Carrier's action in terminating the Claimant was not unreasonable, arbitrary, or capricious. 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:** 9/1/16

  
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**CARRIER MEMBER**  
**DATED:** September 1, 2016 2:30 pm est