

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. 316

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. J. Molyneux, issued by letter dated June 29, 2015, in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ pertaining to the sections entitled ‘Trust and Honesty’ and ‘Professional and Personal Conduct’ was unwarranted (System File NEC-BMWE-SD-5356D AMT).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, Mr. J. Molyneux 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 May 22, 2015, 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 and Professional and Personal Conduct in connection with an April 23, 2015, incident in which the Claimant allegedly made false statements to a Carrier investigator. The investigation was conducted, after a postponement, on June 16, 2015. By letter dated June 25, 2015, the Claimant was notified that he had been found guilty as charged. By letter dated June 29, 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 Carrier immediately knew that the injured employee had not been using the required safety equipment, because anything relating to the Claimant's safety belt was irrelevant to and entirely beside the point of the underlying incident, because the Claimant did come forward later to reveal the truth about the entirely side issue of his ownership of the safety belt in question, and because the discipline imposed was not warranted under the circumstances.

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 giving false information to the Carrier during the investigation of a job incident. The Claimant admitted that he did not identify the safety belt at issue as belonging to him because he did not want to interfere with any plan that other employees had to deceive the Carrier into believing that the injured employee had been wearing a safety belt. In a subsequent interview, the Claimant admitted that his earlier statement had not been

truthful. The Claimant, therefore, admitted that he was dishonest with the Carrier during the course of the investigation.

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 admittedly dishonest with the Carrier. Carriers depend on the honesty of their employees for investigations, particularly in serious incidents where people have fallen or been injured. The Claimant admitted that he gave false information to assist employees who might have been trying to deceive the Carrier in some fashion. That is unacceptable behavior, and this Board finds that the Carrier did not act unreasonably, arbitrarily, or capriciously when it terminated this short-term employee. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 9/11/16



CARRIER MEMBER
DATED: September 12, 2016 4:38 pm 251