

**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. 320**

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

1. The Carrier’s dismissal imposed on Mr. K. Cavanaugh, by letter dated October 30, 2015, was in violation of the Agreement’s fair and impartial trial guarantees and was also arbitrary, disparate and excessive and in violation of the Agreement (System File NEC-BMWE-SD-5383D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Cavanaugh shall be reinstated with all rights and benefits and compensated for all losses due to the Carrier’s improper discipline.”

**FINDINGS:**

By notice dated July 29, 2015, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence relating to Trust and Honesty, Professional and Personal Conduct, Amtrak Values Integrity, and Attending to Duties in connection with allegations that the Claimant arrived late for and/or left early from his scheduled shifts on thirty-four occasions during the period from July 31 through November 7, 2014, yet dishonestly claimed and was paid for working his entire shift on each such occasion. The investigation was conducted, after two postponements, on October 21, 2015. By letter dated October 30, 2015, the Claimant was notified that he had been found guilty as charged and 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 afforded a fair and impartial investigation, 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 penalty of discharge is commensurate with the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Carrier untimely summoned the Claimant to a hearing on alleged wrongdoing that had occurred more than seven months earlier, because the Carrier disciplined the Claimant without just cause, because the Claimant and his supervisors had a history of dealing with time reporting in the manner at issue in order to get work done more efficiently, because the dealing involved here benefitted the Carrier more than it did the Claimant because it saved the Carrier four to six hours per night in transporting a truck between Providence and Boston, because the Claimant also worked outside his bulletined hours without charging his time or claiming overtime, and because the evidence shows that no discipline should have been imposed, much less the ultimate penalty of discharge.

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. There was a reason for the delay between the beginning of the investigation and the actual charges because the OIG had to file a report which had to be reviewed by the appropriate people in management before the charges

could be issued.

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 behavior in which he was paid for time that he did not work. The record reveals that, on numerous occasions, the Claimant did not work his entire shift. The record reveals that on at least thirty-four different occasions, the Claimant arrived late or left early and was paid for a full day. The one problem with the Carrier's case here is that the Claimant's time records were approved and he was apparently authorized to leave early and arrive late by a foreman. Although the Carrier contends that that foreman did not have the authority to give that permission to the Claimant, the Claimant apparently acted under the foreman's instruction. Moreover, there is other evidence that the Claimant worked additional hours outside of his actual shift time. However, the record is clear that the Claimant did violate the Carrier's rules, even if mistakenly, and thereby subjected himself to disciplinary action.

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.

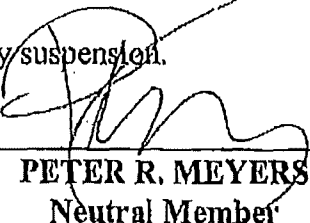
The Claimant in this case had accumulated sixteen years of seniority with the Carrier at the time of his termination. Although the Claimant did claim pay for time not worked and deserves discipline for that offense, the record reveals that he had some mitigating circumstances because of this foreman approving his time and giving him the

permission to leave early or to come in late. Moreover, there is evidence that the Claimant did work additional hours for which he was not compensated.

Given the Claimant's lengthy seniority, plus some of the mitigating factors that are apparent in this record, this Board orders that the Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension. It should be made clear to the Claimant that he must obtain the appropriate permission before leaving work earlier or coming in late and also make the appropriate deductions of time from his timecard in the future if he actually does not work the full eight-hour shift. The Claimant cannot rely on the permission of a working foreman.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

  
PETER R. MEYERS  
Neutral Member

  
ORGANIZATION MEMBER

DATED: 1/30/17

  
CARRIER MEMBER

DATED: January 30, 2017 E.A.P. (initials)