

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. 321

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

1. The Carrier’s dismissal imposed on Mr. M. Dunn, by letter dated February 4, 2016, was excessive, unreasonable, arbitrary, and without just cause (System File NEC-BMWE-SD-5403D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Dunn shall receive all due remedies.”

FINDINGS:

By notice dated July 7, 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 Professional and Personal Conduct and to Attending to Duties, as well as Carrier rules relating to Roadway Worker Protection, Safety, and Use of Portable Electronic Devices in connection with a June 24, 2015, incident in which the Claimant allegedly was wearing headphones attached to an electronic device while working as the assigned watchman for eight contractors and Carrier employees working on a Newark Station platform. The investigation was conducted, after four postponements, on January 28, 2016. By letter dated February 3, 2016, the Claimant was notified that he had been found guilty as charged, and by letter dated February 4, 2016, 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 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 discipline imposed is commensurate with the seriousness of the proven offense and the Claimant's prior record. The Organization contends that the instant claim should be sustained in its entirety because the Carrier disciplined the Claimant without just cause, because the outright dismissal of a twenty-plus-year employee on such a misapprehended basis is entirely improper, because the Claimant's otherwise discipline-free record over the seven prior years suggests that the discipline imposed is not progressive in nature, and because the discipline imposed was unwarranted.

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 Standards of Excellence on June 24, 2015, when he was wearing headphones that were attached to an electronic device and was not wearing some of his other safety equipment when he was supposed to be serving as a watchman. The record reveals that the Claimant was not devoting his full attention to his duties as a watchman and admittedly started to wind up his work over an hour before his quitting

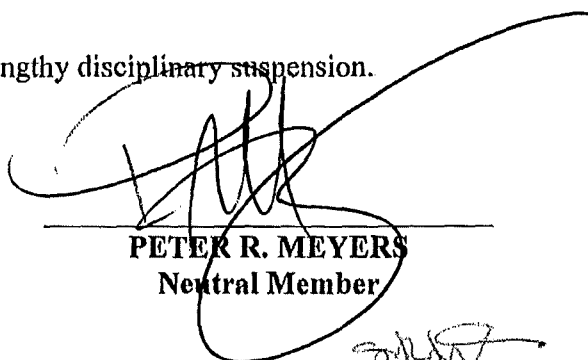
time. The Claimant had a very responsible position of making sure that the contractors were safe, and he did not perform his duties.

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 guilty of some very serious offenses. However, the Claimant's personnel record reveals that he has been employed by the Carrier since 1995. Although he had some serious discipline, including several thirty-day suspensions earlier in his employment, the record also reveals that he has had a clear record for the past seven years. The Carrier lists his latest offense as "abandoned watchman duties without permission." Given that lengthy seniority and the fact that while he did leave his post without permission, he really did not abandon his job, this Board cannot find that the Carrier had just cause in terminating the Claimant for this latest offense after a twenty-year record and no discipline for the past seven years. Therefore, we order that the Claimant 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.

AWARD:

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



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: January 23, 2018



CARRIER MEMBER
DATED: January 23, 2018 C-813 att c59