

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. 322

STATEMENT OF CLAIM:

Appeal of the ten-day disciplinary suspension issued to Claimant G. Romero by letter dated August 25, 2015.

FINDINGS:

By notice dated June 16, 2014, 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, Attending to Duties, and Safety, as well as the Carrier's Workplace Violence Policy, in connection with a June 11, 2014, incident in which the Claimant allegedly engaged in a verbal and physical altercation with a B&B Inspector over overtime hours that the Claimant believed were owed to him. The investigation was conducted, after five postponements, on August 13, 2015. By letter dated August 20, 2015, the Claimant was notified that he had been found guilty of violating Carrier's Standards of Excellence relating to Professional and Personal Conduct and Attending to Duties, and not guilty of violating Carrier's Standards of Excellence relating to Safety and Carrier's Workplace Violence Policy. By letter dated August 25, 2015, the Claimant was notified that he was being assessed a ten-day suspension, with five days to be served and five days to be held in abeyance. 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 with all due process to which he was entitled, because substantial evidence in the record supports the finding of guilt, 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. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to satisfy its burden of proof, because it was unjust for the Carrier to impose the same measure of discipline that it set forth in the waiver offer relating to all charges when the two most serious charges were not proven, and because the discipline imposed was excessive and unjust.

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 11, 2014. The record reveals that the Claimant engaged in a verbal altercation over overtime hours. The Claimant instigated the dispute by putting his finger in the face of the inspector. The inspector legitimately felt threatened, even though the gesture may just have been rude but was not aggressive.

Once this Board has determined that there is sufficient evidence in the record to

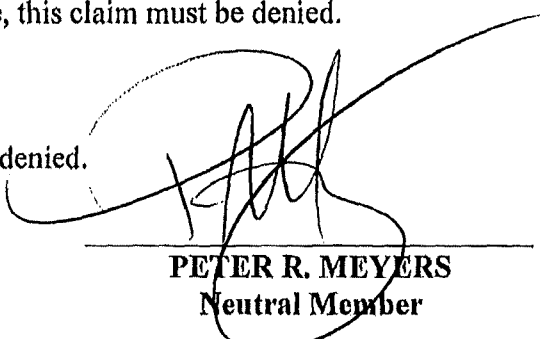
support the guilty finding, we next turn our attention to the type of discipline imposed.

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 issued a ten-day suspension, with five served and five held in abeyance. Given the seriousness of this offense, which often can lead to much more severe disciplinary action including discharge, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discipline in this case. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: January 23, 2018



CARRIER MEMBER

DATED: January 23, 2018