

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. 326

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

1. The Carrier’s discipline (dismissal) of Mr. M. Caleca issued by letter dated December 21, 2017 in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ and Workplace Violence Policy was harsh, excessive, arbitrary and capricious (System File NEC-BMWE-SD-5609D AMT).
2. As a consequence of the violated referred to in Part 1 above, Mr. Caleca shall be reinstated to the Carrier’s service with all benefits, seniority rights unimpaired, the record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

By notice dated August 20, 2017, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence and its Workplace Violence Policy in connection with a July 29, 2017, incident in which the Claimant allegedly exhibited unprofessional conduct when he engaged in a verbal altercation with a co-worker. The investigation was conducted, after two postponements, on November 21, 2017. By letter dated December 20, 2017, the Claimant was notified that he had been found guilty as charged. By letter dated December 21, 2017, 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 of guilt, because the Claimant was afforded a fair and impartial investigation, because there is no merit or mitigating value to the Organization's assertions, because the requested remedy is not appropriate, and because the discipline imposed is commensurate with the seriousness of the proven offenses, and was not arbitrary, capricious, or excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to satisfy its burden of proof of proving the Claimant guilty in light of the practices and norms that exist in the industry and on the property, because a lesser level of discipline was appropriate in light of the Claimant's long tenure and the fact that he was significantly provoked, because far more serious violations on this property have resulted in lesser discipline, and because the discipline imposed was greatly excessive.

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 Carrier's Workplace Violence Policy 3.12.0 when he engaged in unprofessional and threatening conduct with a co-worker. The Claimant eventually lunged towards the co-worker at his pickup truck, preventing him from initially closing the truck door and getting away from the Claimant. The Claimant acted in an aggressive manner and came at the other employee like he was going to take a swing at him. Other


co-workers supported the victim in this case. The Claimant does not deny what occurred that day. He contends that it was just a reaction to the other employee, and it was the straw that broke the camel's back. But the action, in violation of the rules, clearly did occur.

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.

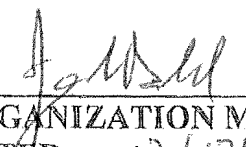
The Claimant in this case was guilty of a very serious offense of violating the Carrier's Workplace Violence Policy. Given the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, this claim must be denied.

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 12/17/2018



CARRIER MEMBER
DATED: 12/17/18