

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. 329

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant Justin Shue.

FINDINGS:

By notice dated July 12, 2017, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier's Standards of Excellence and Electrical Operating Instructions in connection with a July 4, 2017, incident in which the Claimant allegedly and unsafely failed to ensure that the pantograph on a CAT Car was lowered and locked into position. The investigation was conducted, after several postponements, on March 15, 2018. By letter dated March 26, 2018, the Claimant was notified that he had been found guilty as charged. By letter dated March 27, 2018, the Claimant was notified that he was being assessed a thirty-day suspension and final warning. 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 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 proof, because numerous issues have an effect on the pantograph latching mechanism, because the pantograph latch did not operate properly, because this CAT car has had numerous electrical and mechanical issues, because the Claimant lowered the pantograph and checked that it was down and locked, and because the discipline imposed was unwarranted, harsh, severe, and insupportable.

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 unsafely operating his CAT Car when he failed to ensure that the pantograph was lowered and locked into position. As a result of the Claimant's failure, while they were traveling back, the CAT Car stopped at a stop signal and the pantograph on the CAT Car rose up onto the energized catenary. The Claimant did not deny that the pantograph came into contact with the electric wire. The Claimant's actions violated AMT-2 Rule 6.304.

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 thirty-day suspension. The Claimant had previously received a ten-day suspension for tripping a trolley circuit and also had tested positive for cocaine. Given the previous disciplinary background of the Claimant, coupled with the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the thirty-day suspension to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.

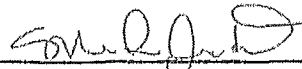


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: June 27, 2019



CARRIER MEMBER

DATED: June 28, 2019