

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. 331****STATEMENT OF CLAIM:**

Claim challenging the Carrier's dismissal of Claimant Edward Neverez

FINDINGS:

By notice dated May 22, 2018, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier's Standards of Excellence pertaining to Attending to Duties and to Professional and Personal Conduct, as well as Carrier rules relating to the use of electronic devices, in connection with a May 5, 2018, incident, discovered during a May 7, 2018, review of drive cam video, in which the Grievant was identified on camera as using an unauthorized electronic device while operating a Carrier vehicle. The investigation was conducted, after two postponements, on July 26, 2018. By letter dated August 3, 2018, the Claimant was notified that he had been found guilty as charged. By letter dated August 8, 2018, 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, 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's handling of this matter and imposition of discharge are not consistent with the Carrier's handling of recent similar cases following previous Awards that did not agree with the Carrier's discharge of employees found guilty of similar infractions, because the Claimant has been treated in a disparately harsh manner compared with two other employees recently charged with use of unauthorized electronic devices who were allowed to continue their employment after serving minimal or no time, and because the discipline imposed was harsh and 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 rules with respect to the use of electronic devices while performing services, specifically Rules Alert 2017-02 and the Use of Portable Electronic Devices P/I 3.23.2. The record is clear that the Claimant was identified on a video camera using an unauthorized electronic device while operating an Amtrak vehicle at 10:03 in the morning. Various rules prohibit "any unauthorized use of electronic devices while operating or riding or moving the equipment." The Claimant admitted his wrongdoing and indicated that he is addicted to his cell phone.

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

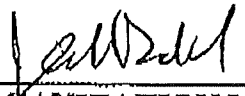
support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

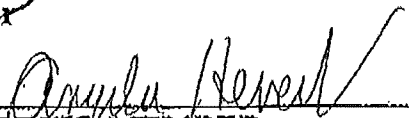
The Claimant in this case was guilty of a very serious offense. However, the record reveals that the Claimant had no previous discipline over his ten years of employment with the Carrier. Given that lengthy service that the Claimant has provided for the Carrier, this Board finds that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant's employment. The Claimant deserved a lengthy disciplinary suspension, but not discharge. Therefore, 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.

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 work shall be considered a lengthy disciplinary suspension.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
DATED: 11/12/2019


CARRIER MEMBER
DATED: 11-12-19