

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. 333

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

1. The Carrier’s discipline (dismissal) of Mr. R. Forstenhausler, issued by letter dated September 25, 2019, in connection with alleged violation of the Carrier’s ‘Standards of Excellence’ pertaining to the sections entitled ‘Integrity,’ ‘Trust and Honesty,’ ‘Attending to Duties,’ and ‘Professional and Personal Conduct’ as well as the Carrier’s Ethical Conduct and Conflict of Interest Policy 5.0, was excessive, unreasonable and arbitrary (System File NEC-BMWE-SD-5685D AMT).
2. As a consequence of the violation referred to in Part 1 above, we request that you overturn this decision, reinstate Mr. Forstenhausler and make him whole for all losses associated with this dismissal which include lost time, including but not limited to lost overtime, all benefit rights restored and all seniority rights restored. We also request that this issue be stricken from his record.”

FINDINGS:

By notice dated July 5, 2019, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence relating to Integrity, Trust and Honesty, Attending to Duties, and Professional and Personal Conduct, as well as the Carrier’s Ethical Conduct and Conflict of Interest Policy, in connection with information received by the Carrier on June 28, 2019, that the Claimant allegedly had fraudulently entered time into the Carrier’s system for 10.30 hours of overtime pay for a co-worker for work that the co-worker had not performed. The Carrier further discovered that during its investigation of this incident, the Claimant

allegedly submitted a false statement. The investigation was conducted, after two postponements, on September 12, 2019. By letter dated September 25, 2019, the Claimant was notified that he had been found guilty as charged, and 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 of guilt, because the Claimant abuse his position as a foreman and attempted to pay an employee for time not worked, because there is no merit to the Claimant's stated defense that he was following a common practice, or mitigating value to the Organization's assertions, 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, because there was no cause to discipline the Claimant, because the record establishes that the Claimant was following the common and accepted practice on the property of entering time for an employee whose seniority had been violated, because the Claimant was not deceptive or dishonest, and because the discipline imposed was grossly 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 regarding integrity, honesty, and trust when he entered time into the Carrier's timekeeping system for overtime pay for another employee who had not performed work that day. The Claimant performed this wrongful action without any permission or authority from the Carrier. The Claimant did tell his supervisor that he was putting the time in for the other employee. The Claimant's actions clearly violated the relationship of trust between him and the Carrier and his admission of all aspects of the incident shall be considered an admission of guilt.

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 was discharged by the Carrier for his wrongdoing in this case. However, given a number of mitigating factors that were brought to light during the course of the hearing, as well as the twenty-two years of service that the Claimant has provided for the Carrier, this Board must find that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant's employment. Therefore, this Board orders 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. In addition, the Carrier has the right to remove the Claimant from the foreman track inspector position and downgrade his status as an employee to something without the foreman status. That action will be considered a part of the penalty as the

Claimant's incidents of wrongdoing relate to his work as a foreman.

AWARD:


The claim is sustained in part and denied in part. The Claimant shall be reinstated to employment, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension. In addition, the Claimant shall be removed from the foreman track inspector position and given a position without the foreman status as further punishment for his wrongdoing in this case



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 12-7-2020



CARRIER MEMBER
DATED: 12-7-2020