

SPECIAL BOARD OF ADJUSTMENT NO. 986

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE,)	
)	
Organization,)	Award No. 341
)	
and)	
)	
)	Case No. 341
)	
NATIONAL RAILROAD PASSENGER CORPORATION)	
(AMTRAK) – NORTHEAST CORRIDOR,)	
)	
Carrier)	

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

1. The Carrier’s discipline (dismissal) of K. Jones, issued by letter dated December 8, 2022, for his comments during a safety meeting was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMW-163097-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Jones shall be reinstated to service immediately and made whole for all losses associated with this dismissal, which includes lost time, including, but not limited to, lost overtime, all benefit rights restored and all seniority rights restored. Additionally, this matter shall be stricken from the Claimant’s record.”

FINDINGS:

Prior to his dismissal, the Claimant was a Foreman with 24 years of service. At the time of the incident, the Claimant had not been disciplined since 2016, when he received a 30-day suspension.

On June 7, 2022, the Claimant spoke during a safety meeting and expressed his serious concerns about what Claimant perceived to be poor communication leading to unsafe working conditions, including two close calls and six injuries. While addressing a group of approximately 75-100 employees, the Respondent said words to the effect of “every white hat should be shot” while communicating his concerns. Supervisors and above are assigned to wear white construction hardhats. The Claimant, a foreman, wears a white construction hardhat. Following the Claimant’s

comments, the safety meeting proceeded. After the safety meeting concluded, the Claimant was not taken out of service for over three hours and then the Claimant was driven by another employee to a different location to collect his belongings. The Claimant was later separately charged with making terroristic threats. By the date of the investigation, all criminal charges were dropped.

On or about June 28, 2022, the Claimant was notified in writing of the charges and given notice to appear for a formal investigation. The Notice of Investigation stated in relevant part:

It is alleged that on Tuesday, June 7, 2022, during a safety meeting Foreman Kenneth Jones stated “every white hat should be shot” or words to that effect. This incident occurred in Bear yard.

The investigation was rescheduled and held on November 28, 2022.

Following the investigation, on or about December 7, 2022, the Carrier provided written notice to the Claimant that it had found the charges were proven and the Claimant violated Amtrak policy by engaging in threatening and hostile behavior in violation of Amtrak’s Code of Ethics and Standards of Behavior, Workplace Violence and Security, Conduct, and the Amtrak Workplace Violence Prevention Policy. The December 7, 2022 Decision letter stated in part:

Amtrak specifically prohibits threats of violence against coworkers as well as intimidating, threatening, or hostile behavior. Amtrak’s policy governing Conduct encourages the resolution of conflicts through civil discourse. Your conduct did not conform to the values set forth in the policies submitted by the carrier.

The Claimant was dismissed in all capacities, effective immediately. The Organization filed a claim on the Claimant’s behalf, challenging the Claimant’s dismissal and seeking reinstatement with full seniority unimpaired and that the Claimant be made whole. The Carrier denied the claim.

The Carrier asserts that the charges were proven through substantial evidence at the investigation. The Carrier cites the testimony of the Carrier’s witnesses and documentary evidence to support its assertion that the Claimant made a threat that his coworkers and the police took seriously. The Carrier argues the Organization’s assertions are without mitigating value as no procedural violations occurred during the hearing when the Carrier did not call all the witnesses on its witness list. The Carrier argues the Organization was permitted to call witnesses by the Hearing Officer. Further, the Carrier asserts those present took the Claimant’s words as a threat, as evidenced in part by the fact the police were called. The Carrier avers that threats of workplace violence warrant termination, regardless of the Claimant’s length of service.

The Organization first contends that the Claimant has consistently maintained that he said “shocked” not “shot”. The Organization asserts that the Carrier refused to provide it with exculpatory evidence that the Organization requested, including statements, and that one of the Carrier’s witnesses testified that management refused to accept statements that the witness had

collected because they did not support the Carrier's case. Further, only one witness testified that he felt threatened by the Claimant's comments but took no action to have the Claimant removed from the property for over three hours. Thus, the Organization asserts, the Carrier has not met its burden of proof.

The Carrier has the burden of proof to establish by substantial evidence the misconduct charged. In carefully reviewing the record in this matter, the Board has considered all of the witness testimony as well as the documentary evidence. At the investigation, the Carrier presented three witnesses in support of its position that the Claimant made a threat which violated the Carrier's prohibition against workplace violence. Of the Carrier's three witnesses, only one, an Assistant Production Engineer, testified that he perceived the Claimant's comment as a threat. However, neither this witness nor any other member of Carrier management, took immediate action to have the Claimant removed from the property. Rather, the Claimant was escorted off the property over three hours later and another co-worker was permitted to drive alone with the Claimant so that the Claimant could retrieve his belongings. Neither of these actions, the delay in removing the Claimant nor allowing another co-worker to transport the Claimant alone, were consistent with a perceived credible threat. Further, the criminal charges which were later brought against the Claimant as a result of the incident have since been dropped.

Additionally, another Carrier witness, an Assistant Supervisor, testified that the Claimant was concerned about the safety of the employees, that the Claimant expressed those concerns in a way that, while inappropriate, was not a threat, and that the witness did not feel threatened. The Assistant Supervisor also testified that the safety meeting continued as normal after the Claimant's comments. The Assistant Supervisor further testified that he was asked to collect statements from those present but that when he attempted to turn the statements in, he was told by management that they did not need the statements as the statements indicated the employees from whom they were collected had not seen or heard anything. The other Carrier witness, a Construction Manager, testified that he did not feel he was in danger following the Claimant's comments. A Union witness who was also present for the incident testified that the meeting continued following the Claimant's comments and that at no point did the witness feel threatened.

The Board concludes that while the record contains substantial evidence to support the conclusion that the Claimant said "shot" not "shocked", there is not substantial evidence to support the conclusion that the Claimant made a threat. The Board wishes to make absolutely clear that the words the Claimant used to express his concerns about the safety of his subordinates and co-workers is unacceptable and a violation of policy. The Claimant engaged in serious misconduct when he chose a grossly inappropriate expression to communicate his concerns.

As to the penalty of dismissal, however, there are several relevant factors that lead the Board to conclude that the Claimant should be afforded the opportunity of a last chance to return to work without backpay. The Claimant is an employee with 24 years of service to whom no discipline has been issued in the past six years. The Claimant was speaking at a safety meeting about his concerns and belief that poor communication was negatively affecting workplace safety

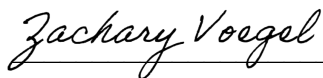
and about the need for supervisors, including himself, to do better to ensure the safety of workers. At least one Carrier witness testified that there was frustration at that time concerning the level of staffing, injuries, and communication challenges. That same Carrier witness testified that the Claimant was “a good guy” who was concerned about his fellow workers. The context in which the statement was made, the perceptions of all but one witness that the Claimant was not making threats or did not make the witnesses feel as though they were in danger, lead this Board to conclude that the penalty of dismissal is not supported.

AWARD:

The claim is sustained in part. The dismissal shall be converted to a final disciplinary action and the Claimant shall be afforded the opportunity to return to work without backpay. The Carrier is ordered to make the Award effective on or before 30 days following the date the Award is transmitted to the parties.



Sarah Miller Espinosa, Chair



Organization Member



Carrier Member

DATE: 11-25-2024