

SPECIAL BOARD OF ADJUSTMENT NO. 986

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE,)	
)	
Organization,)	Award No. 342
)	
and)	
)	
)	Case No. 342
)	
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 Q. Gee, issued by letter dated December 1, 2022, for his alleged insubordination and claiming time not worked was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMWE-163096-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant Q. Gee 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:

The Claimant was a lineman with 13 years 7 months of service at the time of his dismissal. The Claimant’s service record included two ten-day suspensions, one of which was issued on or about March 25, 2019, for insubordination and failure to follow instructions and the other of which was issued on or about February 22, 2013 for safety and failure to perform duties properly.

On or about June 29, 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 June 6, 2022, Quentin Gee was insubordinate when he failed to follow instructions from his Gang Foreman who directed him to report to Coatesville Station. He then submitted and requested pay for overtime through his ET Work Report for time he was not entitled to be paid for.

The investigation was rescheduled and held on November 22, 2022.

Following the investigation, on or about December 2, 2022, the Carrier provided written notice to the Claimant that it had found the charges were proven and the Claimant violated the Amtrak Code of Ethics and Standards of Behavior, specifically Trust and Honesty, Attending to Duties, and Follow the Rules. The Carrier informed the Claimant of his "Dismissal 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 and that the penalty of dismissal was merited given the seriousness of the insubordination as well as the Claimant's violation of the Carrier's trust and honesty provisions of the Code of Ethics and Standards of Behavior. The Carrier cites the testimony of witnesses and documentary evidence in support of its position. The Carrier also cites prior awards, including SBA 986 Award 245, which stated in part:

It is fundamental that insubordination is a dismissible offense. The Board has stated on numerous occasions that the workplace is not a debating society and when an employee gets a work order; he must follow it; and if he has a problem with it, he can grieve it later.

The Organization contends that the Hearing Officer should not have credited the testimony of certain Carrier witnesses. The Organization further argues that the Claimant was given conflicting directives. The Organization asserts that the Carrier failed to meet its burden to establish misconduct and that, even had the Carrier met its burden, the penalty of termination serves no legitimate purpose other than punishment.

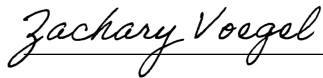
After carefully considering the record in this matter, the Board concludes that there is not substantial evidence to support a finding that the Claimant was insubordinate. That is, the record is insufficient to establish the Claimant knowingly disregarded work instructions. Therefore, the Claimant shall be reinstated to service immediately and made whole for all losses associated with this dismissal less any earnings derived during this period, all benefits rights restored, and all seniority rights restored. Additionally, this matter shall be stricken from the Claimant's record.

AWARD:

The claim is sustained as set forth in the above Opinion. 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