

**SPECIAL BOARD OF ADJUSTMENT NO. 986**

**PARTIES TO THE DISPUTE:**

<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>	)	
<b>EMPLOYEES DIVISION – IBT RAIL CONFERENCE,</b>	)	
	)	
<b>Organization,</b>	)	<b>Award No. 343</b>
	)	
<b>and</b>	)	
	)	
	)	<b>Case No. 343</b>
	)	
<b>NATIONAL RAILROAD PASSENGER CORPORATION</b>	)	
<b>(AMTRAK) – NORTHEAST CORRIDOR,</b>	)	
	)	
<b>Carrier</b>	)	

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

1. The Carrier’s discipline (dismissal) of R. Andrulonis issued by letter dated March 23, 2023, for his alleged creating a loss of goodwill and bringing discredit to Amtrak was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMW-167724-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Andrulonis 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 employed as a Junior Tamper based in Philadelphia when, on or about March 2, 2023, the Claimant was arrested as a result of his actions on January 6, 2021, when Claimant unlawfully entered the Capitol Building. While present in the Capitol, the Claimant took and posted an image of himself to social media. The arrest yielded several news articles identifying the Claimant as an Amtrak employee, including from the following news outlets: ABC, Philadelphia Enquirer, Phillie Mag, and the Daily Beast.

On or about March 9, 2023, 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:

On March 3, 2023, Amtrak management became aware that you were identified in multiple media outlets as an Amtrak employee in connection with your arrest for alleged participation in the January 6, 2021 Capital Riots in Washington, D.C. Your conduct and identification as an Amtrak employee has created a loss of goodwill and brought discredit to the Amtrak brand.

The investigation was held on March 14, 2023.

Following the investigation, on or about March 23, 2023, the Carrier provided written notice to the Claimant that it had found the charges were proven and that the Claimant was in violation of Amtrak's Code of Ethics and Standards of Behavior, specifically policies of Making Good Decisions, Attending to Duties, Professional Image, Identifying Conflicts of Interest, and Political Activity. By Notice of Discipline dated March 24, 2023, 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.

Prior to the Claimant's arrest on or about March 2, 2023, the Carrier had dismissed the Claimant as a result of Claimant's actions on January 6, 2021. Those charges included loss of goodwill and bringing discredit to Amtrak. The Claimant was reinstated following Award 335 of this Board. The Claimant's service record includes a 60-day suspension for utilizing rail pass privileges for political activity.

The Carrier asserts that the charges were proven through substantial evidence in that the Claimant was engaged in criminal activity in the Capitol Building on January 6, 2021, was arrested for said conduct on or about March 2, 2023, and several news outlets published articles about the Claimant's arrest; these articles emphasized the Claimant's employment with Amtrak. The Carrier highlights the testimony of its Senior Public Relations Manager who explained the millions of impressions that were generated by the articles and the negative impact such exposure has on the Amtrak brand.

The Organization contends that this is not the first time the Carrier has attempted to terminate the Claimant's employment for the same offense. The Organization asserts this Board previously reinstated the Claimant after the Carrier dismissed the Claimant for loss of goodwill and bringing discredit on Amtrak. The Organization avers that this is a second bite at the apple and an irrefutable case of double jeopardy. In addition, the Organization argues there is no evidence that the Carrier's business was impacted by the Claimant's actions.

The Carrier contends the Organization's arguments are without merit and argues in part that double jeopardy is a criminal concept that cannot be squarely applied in the workplace. The Carrier cites PLB No. 6877/Award No. 22 (involving two different investigations for the same train trip – one involving treatment of a passenger and one involving falsifying an injury) and PLB No. 6807/Award No. 5 (two positive drug tests that employee claimed were the result of the same

drug use) as support for its claim. The Carrier asserts that the penalty of termination is justified in that there is precedent for termination of employees who compromise the Carrier's good will with the public. The Carrier further argues the Claimant is not a long tenured employee and that Claimant's short length of service does not justify mitigation of the disciplinary penalty.

The Carrier has the burden of proof to establish by substantial evidence the misconduct charged. Here, however, the Carrier previously dismissed the Claimant for his actions on January 6, 2021, and that termination was overturned by this Board. While the Carrier argues there is relevant precedent supporting its assertion that double jeopardy does not bar this termination, the Board finds the cases cited by the Carrier are distinguishable given the unique circumstances presented in the instant matter. First, concerning PLB No. 6807/Award No. 5, that matter concerned two positive drug tests. Though the Claimant argued the results were the consequence of the same drug use, the misconduct in which the Claimant engaged was testing positive for drugs – on two different occasions. This is not analogous to the instant matter where the underlying conduct is the same– the Claimant's misconduct in unlawfully entering the Capitol Building on January 6, 2021, including the loss of goodwill and discredit to the Amtrak brand.

Next, concerning PLB No. 6877/Award No. 2, though two investigations were conducted and the separate charges in that case related to the same trip, the investigations and resulting charges stemmed from distinct misconduct. That is not the case in the instant matter. The charges in the earlier incident resulted in part because of the Claimant's unlawful entry into the Capitol on January 6, 2021. That the Claimant was criminally charged for this behavior approximately two years after the misconduct for which the Claimant was previously dismissed and ultimately reinstated does not, in and of itself, allow the Carrier to dismiss the Claimant again. Arbitration awards are final and binding. To allow the Carrier to revisit the decision of this Board under the circumstances specific to the instant matter would undermine the integrity of the dispute resolution process.

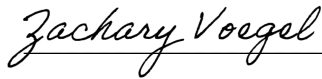
The appropriate remedy to be afforded the Claimant in this matter, however, is necessarily impacted by the Board's decision in Case No. 357, which was simultaneously before this Board. In that case, the Board upheld the termination of the Claimant's employment. Therefore, reinstatement is not an appropriate remedy. Rather, the Carrier must make the Claimant whole for economic losses associated with dismissal of the Claimant in this matter, Case No. 343, in the amount that the Claimant would have otherwise earned prior to the Claimant's dismissal for the misconduct related to Case No. 357, less any amounts earned by the Claimant during this period.

**AWARD:**

The claim is sustained in part to the extent indicated and the remedy limited as described. 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

DATE: 11-25-2024



Carrier Member

Dissent Attached

CARRIER MEMBER'S DISSENT TO AWARD NO. 343 OF SPECIAL BOARD OF ADJUSTMENT NO. 986

Amtrak dissents to the Majority's decision to reinstate an employee who was terminated after multiple news outlets reported his arrest in March of 2023 for his role in the riot at the United States Capitol Building. Specifically, Amtrak dissents to the majority's finding that this dismissal was tantamount to double jeopardy in that the Claimant had been terminated previously and reinstated by this board. In that case, Amtrak charged Claimant with his role in the January 6, 2021 riot and using Amtrak pass privileges to travel to and from the riot:

On February 1, 2021 Engineering Management was made aware of an OIG Investigation involving Trackman Ronald Andrulonis' participation in the riot that occurred inside the United States Capitol Building on January 6, 2021. The riot included unauthorized entry into a Federal Building, property damage, larcenies, assaults and deaths. Mr. Andrulonis has appeared in social media posts (Instagram, Propublica.org), in both video and still pictures while he was inside the Capitol during the assault. These pictures and video were shared with Mr. Andrulonis' coworkers. Mr. Andrulonis did not report for his assigned shift on January 6, 2021 and failed to properly notify management of his pending absence resulting in his being given an unexcused, unpaid absence for this day. Instead, Mr. Andrulonis traveled on Amtrak trains to and from participation in the January 6, 2021 riot. Mr. Andrulonis has brought discredit and a loss of good will by participating in the January 6, 2021 riot during his working hours as well as posting images online that violate Amtrak values and potentially threaten our brand and reputation.

This member would draw the board's attention to the fact that the above noted charges contained date-centric sources; sources that were not relied upon in the formulation of the charges in the instant case.

Conversely, in the case that is the subject of this award, it was instead the Claimant's March 2023 criminal arrest and the resulting national, public news articles that acted as the catalyst for the charges levied against him. The majority board draws an erroneous nexus in this instance by attempting to link both cases to the Claimant's participation in the January 6 riots noting, "the underlying conduct is the same— the Claimant's misconduct in unlawfully entering the Capitol Building on January 6, 2021, including the loss of goodwill and discredit to the Amtrak brand." In point of fact, the cases involved two very different sets of events. In the first case, the Claimant's social media posts were seen by a few co-

workers and perhaps shared with a few other people. The Claimant was not arrested and charged with any criminal activity. In the second case, the Claimant was arrested, and his arrest was covered by multiple, national news outlets, involving multiple layers of impact to Amtrak and its brand.

The majority decision also states, "That the Claimant was criminally charged for this behavior approximately two years after the misconduct for which the Claimant was previously dismissed and ultimately reinstated does not, in and of itself, allow the Carrier to dismiss the Claimant again." This finding sets a dangerous precedent that if an employee engages in behavior that is deemed to be worthy of disciplinary charges by a carrier, and that very same employee is subsequently arrested later in connection with that same behavior, the carrier is barred from pursuing any charges based upon the subsequent arrest. Following the logic of the majority opinion in this award, a carrier that charged an employee for getting into a fight at a bar would later be barred from charging the employee again if the employee was later arrested for murder as a result of the very same bar fight.

These facts notwithstanding, Amtrak has noted in its submission that the concept of double jeopardy is a criminal concept, and arbitral authority is clear that it does not squarely apply in the employment context. To the extent that it does, it is not violated where there are multiple different offenses stemming from the same incident. Amtrak has cited arbitral precedent in its brief upholding this concept and disagrees with the majority's conclusion in this regard.

For all of the reasons previously noted, I respectfully dissent,

*Matthew R. Holt*

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Matthew R. Holt,

Carrier Member, Special Board of Adjustment No. 986