

**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. 344</b>
	)	
<b>and</b>	)	
	)	
	)	<b>Case No. 344</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 M. Thomas, issued by letter dated February 6, 2023, for an alleged altercation was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMW-163587-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Thomas 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:**

On August 11, 2022, while working on a Cat Car, the Claimant and Foreman Craig Zeigler engaged in a heated exchange of words. The Claimant was observed gesturing toward Zeigler in a bold and/or angry manner. After another Amtrak supervisor advised the two that there was not time to continue the exchange, work resumed. At the end of the shift, Zeigler advised Amtrak supervisors that he was not comfortable continuing to work with Claimant as Claimant had threatened him; Zeigler reported that the Claimant told him the Claimant would “fuck your punk bitch ass up.”

On or about August 31, 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 Thursday, August 11, 2022, while working on the Cat Car, Michael Thomas engaged in an altercation and made a threat of physical violence to Foreman Craig Zeigler. This incident occurred in Charles Interlocking.

The investigation was rescheduled and an investigation was held on October 26, 2022.

Following the investigation, on or about November 3, 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 Workplace Violence and Security, Teamwork, and Conduct, and the Amtrak Workplace Violence Prevention Policy, when the Claimant behaved in a threatening and hostile manner towards a co-worker. 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 and cites the testimony of witnesses, including the foreman directly involved as well as those who saw but did not hear the interaction. The Carrier avers it is committed to maintaining a safe and respectful work environment and that any threatening or violent behavior is strictly prohibited. The Carrier argues that the Claimant's actions were egregious, particularly in light of the Claimant's disciplinary history, including a previously issued final disciplinary notice.

The Organization contends that the incident was blown out of proportion by the Carrier. The Organization argues that this was a verbal disagreement between two employees where the other employee only received a first level discipline while the Claimant was dismissed. The Organization argues the penalty of dismissal was arbitrary, excessive, and unwarranted. 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. The Board has carefully considered the evidence in this matter and there is no basis for this Board to disturb the credibility findings of the Hearing Officer. The evidence demonstrates that the Claimant used profanity and told Zeigler he would "fuck up" his "punk bitch ass." Both employees admitted to using profanity during the exchange, though the Claimant denied making a threat.

Concerning the penalty of termination, the Amtrak Workplace Violence Prevention Policy, 1.0, states in part: "Amtrak is committed to providing a safe and secure workplace, free of threats or acts of violence." 5.1 of the Policy further states: "Workplace Violence is an act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that affects the workplace." The Code of Ethics and Standards of Behavior, Conduct, states in part: "We value a workplace that embodies respect and civil discourse. We can disagree without being discourteous. Activities or behaviors that compromise the safety, satisfaction and well-being of

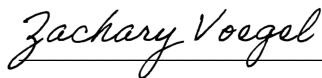
our customers, the public or our fellow employees, such as rudeness, insubordination, assault, intimidation, horseplay, and using profane or vulgar language, are unacceptable and will not be tolerated.” The Claimant violated both the Workplace Violence Prevention Policy and the Code of Ethics and Standards of Behavior. While the Organization argues the other employee involved in the incident received lesser discipline and the dismissal of the Claimant is overly harsh and not supported, the Board does not agree. In January 2021, the Claimant received a Final Disciplinary Action as a result of his failure to observe and obey signals while operating a cat car at the River Interlocking on January 9, 2021, and previously received a 10-day suspension for his failure to perform duties properly, unprofessional conduct, and safety on February 16, 2017. Considering the nature of the misconduct and the Claimant’s prior disciplinary record, the Board concludes the penalty is supported.

**AWARD:**

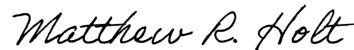
The claim is denied.



Sarah Miller Espinosa, Chair



Organization Member



Carrier Member

DATE: 11-25-2024