

**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. 346</b>
	)	
<b>and</b>	)	
	)	
	)	<b>Case No. 346</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 A. Clinton issued by letter dated February 6, 2023, for alleged negligent and unsafe duties while performing track inspections resulting in a close call was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMW-164254-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Clinton 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:**

At the time of the incident in question, the Claimant had approximately 16 years of service and was employed as a Watchman. The Claimant’s prior service record included: a 10-day suspension (waived) for a safety violation that resulted in an accident with an Amtrak vehicle; a 15-day suspension 15-day deferred (waived) for failure to follow Operating Rules that led to a collision and failure to follow safety rules that led to an injury; and a 30-day deferred suspension, disqualification, and final warning for a safety violation that led to the Claimant being permanently disqualified from operating Amtrak vehicles.

On or about November 22, 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 Monday November 14, 2022 Track Foreman Michael Petrozziello and Watchman Andrew Clinton, while performing track inspections, were negligent and unsafe in their duties when they were involved in a “close call” at Bergen Curve MP 3.7. Messrs. Petrozziello and Clinton cleared in the gage of Track 3 for an Eastbound train on Track 2, a Westbound train was coming around the outside of the curve on Track 3, almost striking the two employees. As a result, the train was put into emergency dumping all air avoiding a potentially catastrophic situation.

The investigation was rescheduled and held on January 25, 2023.

Following the investigation, on or about February 2, 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, Workplace Safety, Attending to Duties, Follow the Code, and the Amtrak Roadway Worker Protection Manual. The Carrier also cited the following provisions, which it determined the Claimant violated:

Amtrak’s Roadway Worker Protection Manual specifically directs that “Trains approach warning shall be given in sufficient time to enable each roadway worker to clear all equipment and move to and occupy a Predetermined Place of Safety not less than 15 seconds before a train moving at the permanent maximum authorized speed on that track can pass the location of the roadway worker.”

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Amtrak’s policy regarding Workplace Safety also directs employees to “comply with all safety requirements related to your position, department and craft.”

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, including the video of the incident and the testimony of the Track Inspector. In support of its position, the Carrier contends that the Claimant, while acting in the capacity of Watchman and responsible for alerting the Track Inspector of the approach of oncoming trains, failed to do so in accordance with applicable policies and rules; that is, there was a close call in which the Watchman and Track Inspector were clear for three seconds rather than the 15 seconds required by the Roadway Worker Protection Manual. The Carrier also contends the NJ Transit Train involved in the incident was

forced to make an emergency stop and that this was a “potentially catastrophic close call.” The Carrier argues the penalty of termination is appropriate given the egregious misconduct of the Claimant as well as the Claimant’s prior disciplinary history, which includes three suspensions of various lengths (10-day; 15 day/15 day deferred; 30 day deferred), all involving safety violations. The Carrier further argues that the Track Inspector received a Final Disciplinary Action and waiver because of the difference in the Claimant and Track Inspector’s disciplinary history.

The Organization contends the Claimant was in the clear, as demonstrated by the video evidence. The Organization asserts that the Track Inspector Foreman involved in the incident was an employee with approximately 2.5 years of service who received a waiver that provided for no time off work. The Organization argues that the Claimant was not afforded the same opportunity. The Organization further argues that the Claimant is a long-serving employee.

The Carrier has the burden of proof to establish by substantial evidence the misconduct charged. The Board has carefully reviewed the record and determined the Carrier has met its burden and established by substantial evidence that the Claimant engaged in misconduct. The video of the incident, which occurred at MP 3.7 Bergen Curve, demonstrates that there was a close call when the Claimant and Track Inspector Foreman were not in the Predetermined Place of Safety (PPOS) 15 seconds before the NJ Transit Train passed. Rather, the train made an emergency stop and the Claimant and the Track Inspector Foreman were clear for approximately 3 seconds rather than the required 15 seconds. Both employees were in violation of Amtrak’s Code of Ethics and Standards of Behavior, specifically, Workplace Safety, Attending to Duties, Follow the Code, and the Amtrak Roadway Worker Protection Manual. The Track Inspector Foreman received a Final Disciplinary Action and waiver as a result of the incident.

Both the Track Inspector Foreman and the Claimant testified, in essence, that, at the time of the incident, they did not feel in danger. The Claimant was emphatic that the train did not blow its horn in warning and that the train stopped as it was conducting a brake test. The video of the incident does not support the Claimant’s version of events, nor does the testimony of the Assistant Division Engineer of Track. The NJ Transit Train did, in fact, blow its horn, and come to an emergency stop. This was a close call, whether or not the Claimant and Track Inspector Foreman realized it at the time. While testifying during the investigation, the Track Inspector Foreman acknowledged that he and the Claimant did not have the required 15 seconds of clearance and were in violation of the Amtrak Roadway Protection Manual.

Concerning the penalty of termination, the Organization argues in part that the Claimant was treated unfairly because the Track Inspector Foreman received a Final Disciplinary Action and the Claimant was terminated. The two employees do not, however, share the same disciplinary history. The Claimant’s prior discipline includes three suspensions involving safety violations and the two of the suspensions were of significant length (15-day suspension/15-days deferred and 30-day suspension deferred). Though the Claimant still does not seem to recognize this was a close call, it was, in fact, a very serious incident where the Claimant and Track Inspector Foreman’s failures could have resulted in their deaths. The Claimant’s prior discipline was also related to

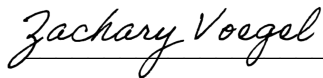
safety violations and the suspensions in question were significant. After careful consideration, the Board concludes that the penalty of termination is appropriate because of the serious nature of the misconduct and the Claimant's disciplinary history.

**AWARD:**

The claim is denied.



Sarah Miller Espinosa, Chair



Organization Member



Carrier Member

DATE: 11-25-2024