

SPECIAL BOARD OF ADJUSTMENT NO. 986

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE,)	
)	
Organization,)	Award No. 347
)	
and)	
)	
)	Case No. 347
)	
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 J. Spence, issued by letter dated May 15, 2023, for alleged dishonesty during an investigation of an accident was unjust, arbitrary, capricious, based on unproven charges and a violation of the agreement (System File BMW-169261-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Spence 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 or about March 14, 2023, the Claimant, who was operating the Tie Handler, came to a stop and the Tripp Machine, operated by a co-worker, collided with the rear of the Tie Handler. Damage was caused to both vehicles. On March 15, 2023, the Claimant provided the following written statement:

On 3/14/23, at the end of the night, I discussed with the tie handler operator that we needed to pick up ties that had fallen of my cart in Trip 1. While picking up ties at a slow speed, I came to a stop while the tie handler was swinging his boom to drop ties on my cart. The boom made contact with my cart on Tripp 1, putting a more

severe bend in the tow hook than it previously had, and breaking the boom on the tie handler.

On March 15, 2023, the operator of the Trip Machine provided the following statement:

On March 14, 2023, towards the end of the shift, me and the Tie Handler discussed with the Trip Operator that we would pick up old ties that had fell off the cart that was attached to the Tripp. While picking up ties from the field side at a 90-degree angle and moving at a slow pace, the Tripp had come to a stop and I did not notice while swiveling the machine the boom made contact with the cart causing the boom to break and bent the tow bar.

On or about April 10, 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:

It is alleged that on March 15, 2023, at approximately 4:45 AM Jody Spence was operating Trip Machine A21942 when he came to a stop and the equipment behind struck his piece of equipment. Mr. Spence was dishonest during the investigation of the incident.

The investigation was rescheduled and held on May 3, 2023.

Following the investigation, on or about May 12, 2023, the Carrier provided written notice to the Claimant that the charges were proven and found:

sufficient evidence to contradict your statement regarding how the accident occurred while you were operating the Tripp cart. Amtrak specifically mandates a responsibility to act with integrity. That means being transparent, trustworthy, and honest, fair in all that we do, and efficiently attending to your duties.

The Claimant was dismissed 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 the Claimant was dishonest on March 15, 2023, during the investigation into the March 14, 2023 incident. The Carrier asserts the Claimant was dishonest when the Claimant in his description of the collision. The Carrier argues the evidence is clear that the operator of the Tie Handler actually struck the rear of the Trip Machine, contrary to the statements of the Claimant and his co-worker.

The Organization contends that the Carrier failed to meet its burden of proof to establish the Claimant was dishonest during the investigation. In support of its position, the Organization asserts that the statements of the Claimant and his co-worker are consistent and there are no

additional eyewitnesses or other evidence of dishonesty. The Organization asserts the discipline imposed was arbitrary, capricious and an abuse of the Carrier's discretion.

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. The testimony of the three Carrier witnesses, the Manager of Engineering Production, the MW Repairman Foreman, and the Senior Field Engineer, as well as the photographs in evidence, establish the damage caused when the Trip Machine, operated by the Claimant's co-worker, struck the rear of the Tie Handler, operated by the Claimant. The statements provided by the Claimant and the operator of the Trip Machine, while consistent with one other, are not consistent with the physical evidence resulting from the collision. Thus, the Carrier has met its burden and by substantial evidence established that the Claimant was dishonest during the investigation.

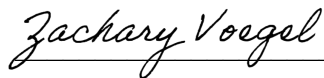
Concerning the penalty of termination, it is generally accepted that when an employee engages in dishonesty during the course of an investigation, the employee erodes the trust necessary to maintain an employer-employee relationship. The Amtrak Code of Ethics and Standards of Behavior, Trust and Honesty, codify the employee's responsibility in this regard. The Carrier cannot be expected to maintain an employment relationship with a Claimant who has engaged in dishonesty by providing a false statement during an investigation, as is the case in the instant matter. Therefore, considering the nature of the misconduct, the Board concludes the penalty of termination is supported.

AWARD:

The claim is denied.



Sarah Miller Espinosa, Chair



Organization Member



Carrier Member

DATE: 11-25-2024