

**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. 348</b>
	)	
<b>and</b>	)	
	)	
	)	<b>Case No. 348</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 S. Smith, issued by letter dated May 12, 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-169239-D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Smith 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 the Claimant was operating the Tripp Machine when he collided with the Tie Handler, operated by a co-worker. Damage was caused to both vehicles. On March 15, 2023, the Claimant provided the following written 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 Shawn Smith was operating Tie Handler A15438 when he collided into another piece of equipment causing damage to the boom. It is further alleged that Mr. Smith was dishonest during the investigation into the incident.

The investigation was rescheduled and held on May 2, 2023.

Following the investigation, on or about May 12, 2023, the Carrier provided written notice to the Claimant that the charges were proven and the Carrier had found “based on the fact that the collision and resulting damage occurred, your initial report of the incident, was caused by a side strike, it has clearly been shown by the testimonies ... coupled with the overwhelming photographic evidence and reports that it was clearly a rear collision.” The Claimant was dismissed. The Organization filed a claim on the Claimant’s behalf, challenging the Claimant’s dismissal and seeking reinstatement with full seniority unimpaired and the Claimant be made whole. The Carrier denied the claim.

The Carrier asserts the Claimant violated Northeast Operating Rules Advisory Committee (NORAC) Operating Rule 80 and was dishonest on March 15, 2023, during the investigation into the March 14, 2023 incident. The Carrier asserts that the Claimant was responsible for colliding with the rear of the Tie Handler while operating the Tripp Machine in that the Claimant failed to notice the Tie Handler had come to a stop; this collision resulted in damage to the Tie Handler and Trip Machine. Further, and significantly, the Carrier argues the Claimant was dishonest when the Claimant said he had a side collision with Trip Machine and that the Claimant did not accurately report that the Claimant actually struck the rear of the Trip Machine with Tie Handler.

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, struck the rear of the Tie Handler. The statements provided by the Claimant and the operator of the Tie Handler, while consistent with

one other, are not consistent with the physical evidence resulting from the collision. Thus, the Carrier has met its burden and established by substantial evidence that the Claimant was dishonest during the investigation.

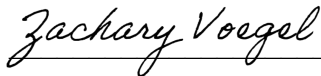
Concerning the penalty of termination, it is generally accepted that when an employee engages in dishonesty during the course of an investigation, the employee erodes the trust necessary to maintain an employer-employee relationship. The Amtrak Code of Ethics and Standards of Behavior, Trust and Honesty, 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