

SPECIAL BOARD OF ADJUSTMENT NO. 986

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE,)	
)	
Organization,)	Award No. 357
)	
and)	
)	Case No. 357
)	
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 R. Andrulonis issued by letter dated September 20, 2023, for his alleged possession of a firearm on company property was unjust, arbitrary, capricious, based on unproven charges and a violation fo the agreement (System Fiel FMWE-167891-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 hired by the Carrier on February 1, 2016. At the time of the incident at issue, the Claimant was assigned as a junior tamper on Production Gang Z181 between Lancaster and Harrisburg, Pennsylvania, and assigned to work Monday through Thursday from 8:00 pm to 6:30 am. The Claimant travelled to his work assignment via train from the 30th Street Station in Philadelphia.

On March 1, 2023 at approximately 6:11 PM, the Claimant parked his personal vehicle at the Penn Coach Yard toward Race Street parking lot; this is the Carrier’s property. The Claimant then travelled by train to his assigned location and travelled back by train. On March 2, 2023, at

6:56 AM, the Grievant drove his vehicle out of the Carrier's parking lot. The Claimant received a phone call from an FBI Agent, who was at the Claimant's parents' home, informing the Claimant a warrant for his arrest was issued. The Claimant hung up on the FBI Agent. The Claimant's mother then called the Claimant and explained that the Claimant needed to turn himself in to the FBI at his parents' home. During this call, the Claimant also spoke with an FBI Agent. The Claimant arrived at his parents home at 7:14 am, 18 minutes after the Claimant left the parking lot. Upon arrival, the Claimant informed law enforcement that there was a firearm in his truck. The Claimant was in legal possession of the firearm as he had a conceal carry permit.

On or about March 23, 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 20, 2023, Amtrak management became aware through OIG Memorandum that you violated Amtrak policy by bringing a firearm onto Amtrak property during a shift spanning March 1 and March 2, 2023.

The investigation was rescheduled on two occasions. The investigation was held on September 8, 2023.

Following the investigation, on or about September 14, 2023, the Carrier provided written notice to the Claimant that it had found the charges were proven and the Claimant violated Amtrak policy by bringing a firearm on company property. The following provision of the Amtrak Code of Ethics and Standards for Behavior was cited:

Amtrak is committed to providing a safe and secure workplace for its employees, contractors, customers and guests. Situational awareness contributes to a safe work environment, and each of us is a first line of defense in ensuring our railroad's safety. Firearms, explosives, knives and other weapons must never be in your possession at work or on the property used for Amtrak business, unless authorized by Amtrak. "See Something, Say Something" is not just a slogan; it can be a life saver. If someone or something looks suspicious, take the time to report it. Threats and acts of violence affect everyone's ability to do their job safely. Amtrak will not tolerate intimidating, threatening or hostile behavior, physical injury to another or acts of vandalism, arson, sabotage or other criminal activities.

By Notice of Discipline dated September 20, 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 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. On or about March 23, 2023, the Claimant was dismissed by the Carrier for by creating a loss of goodwill and bringing discredit to the Amtrak brand after the Claimant in connection with the Claimant's arrest for alleged participation in the January 6, 2021 Capital Riots in Washington, D.C. The Organization filed a claim and this Board sustained the claim per SBA 986 Award 343. Thus, the prior terminations were not considered in issuing the instant Award.

The Carrier asserts that the charges were proven through substantial evidence at the investigation. The Carrier cites the testimony and documentary evidence the Carrier asserts establish a reasonable inference that the Claimant's firearm was in the Claimant's vehicle, which was parked on the Carrier's property during Claimant's shift on March 1 through March 2, 2023. The Carrier further asserts the Hearing Officer did not find credible the Claimant's explanation that he stopped at a friend's house to retrieve his firearm on the way to surrendering to the FBI; nor did the Hearing Officer find credible the friend's explanation that he had left a key under a flowerpot on March 2, 2023 so that the Claimant could retrieve the gun the Claimant had loaned the friend and that the gun was no longer there when the friend returned home for work on the afternoon of March 2, 2023. The Carrier argues the Hearing Officer's credibility determination should not be disturbed.

The Organization contends that many of the facts are not in dispute and that the sole basis of the Carrier's decision to terminate the Claimant rests on the Hearing Officer's determination that the Claimant and Claimant's friend were not credible. The Organization argues there is no evidence or witnesses that contradict the testimony of the Claimant and Claimant's friend. 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, which establishes that the Claimant left the Carrier's parking lot at 6:56 AM and arrived at his parents' home, where he was taken into custody by federal law enforcement officials, at 7:14 AM. This means there were 18 minutes between the time the Claimant left the Carrier's property and the time the Claimant arrived at his parents' home, where he informed law enforcement of the firearm in his vehicle.

The Claimant testified that, after learning of the arrest warrant and the need to surrender at his parents' home, the Claimant stopped at a friend's house approximately one tenth of mile off the route he travelled to arrive at Claimant's parents' house, got out of his vehicle, retrieved a key under a flower pot, opened the door, went inside, retrieved the gun, returned to his vehicle, and drove the rest of the way to meet law enforcement at Claimant's parents house. The Organization asserts that there is no evidence to contradict the Claimant's version of events and therefore the Hearing Officer's determination concerning the Claimant's lack of credibility must not be honored.

In carefully reviewing the record, however, the evidence does not support the Claimant's version of events. That is, at hearing, Mapquest directions of the Claimant travelling from the

parking lot to Claimant's parents' house showed the trip to be seven miles and 13 minutes, with no traffic, and Google Maps showed the trip to be 7.5 miles and 20 minutes. The directions generated by Google Maps from the parking lot to the friend's house showed that route to be 8 miles and 21 minutes. The Claimant testified that the trip took 15-20 minutes and that it only took him a minute to retrieve the gun from his friend's house.

Setting aside the advisability of stopping to retrieve a firearm on one's way to be arrested by federal law enforcement, the amount of time, 18 minutes, between the Claimant leaving the Carrier's parking lot and arriving at his parents' home with his firearm is not in dispute. The Claimant himself testified that the trip would take between 15 and 20 minutes. The Google maps data show the trip to the detour to the friend's house would take 21 minutes. Even if it took the Claimant slightly less time, the Claimant would still have had to exit his vehicle, retrieve a key, unlock a door, retrieve a gun, return to the vehicle, and drive a short distance to his parents' house. The sequence of events posited by the Claimant is inconsistent with the 18-minute timeline. Thus, the Carrier has established by substantial evidence that the Claimant possessed a firearm on the Carrier's property.

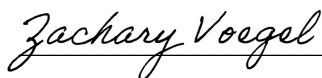
Concerning the penalty of termination, it is clear that possession of a firearm on the Carrier's property is an egregious offense. The Code of Ethics and Standards of Behavior states in relevant part: "Firearms, explosives, knives and other weapons must never be in your possession at work or on the property used for Amtrak business, unless authorized by Amtrak." There is no question that the Claimant was not authorized to possess a firearm on property. Given the gravity of the misconduct, the termination of penalty is supported.

AWARD:

The claim is denied.



Sarah Miller Espinosa, Chair



Organization Member



Carrier Member

DATE: 11-25-2024