

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13676

Docket No. 13571

02-2-00-2-53

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(International Brotherhood of Electrical Workers  
( System Council #16)

**PARTIES TO DISPUTE:** (

(Burlington Northern Santa Fe Railroad  
( (former Burlington Northern Railroad)

**STATEMENT OF CLAIM:**

- “1. That in violation of the controlling Agreement, Rule 30 in particular, Telecommunication Towerman Mike T. Soule was unjustly disciplined by the Burlington Northern/Santa Fe Railroad Company following an investigation conducted on September 2, 1998.
2. That the investigation conducted on September 2, 1998 was not a fair and impartial investigation under the terms required by the rules of the controlling Agreement, and that the discipline assessed of a thirty (30) day suspension was unjust, excessive and capricious.
3. That accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to make Telecommunication Towerman Mike T. Soule whole for all losses sustained by restoring all rights, benefits and privileges due him under the Agreement which were adversely effected and compensate him for all lost wages. Claim also includes removal of all reference to the subject disciplinary hearing from Mr. Soule’s personal record, all in accordance with Rule 30, Paragraph G of the controlling Agreement.”

**FINDINGS:**

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

After Investigation conducted on September 2, 1998, the Claimant, a Towerman headquartered at Spokane, Washington, was assessed a 30-day suspension for failing to comply with instructions, use of inappropriate language and discourteous behavior.

The record shows that the Claimant's Supervisor, R. Rutledge, was notified in June 1998 that one of the Claimant's co-workers was offended by the profane language generally used in the workplace. Supervisor Rutledge advised the employees that Carrier Rules prohibit discourteous conduct and profane, vulgar language and that the Rules would henceforth be enforced. According to Supervisor Rutledge's testimony:

"This was not received very well by most members of the team and . . . I advised them at that time I understood that this type of language was something that we couldn't just turn off like a water spicket [sic] and that I would work with them on this and . . . give this thing time to take effect and for everybody to be able to comply with this rule."

The record further shows that on July 21, 1998, the Claimant and other Telecommunications employees attended a safety class at which signal employees were also present. Supervisor Rutledge conceded that several of the signal employees used profanity during the meeting. During that meeting, the Claimant also used several expletives and Supervisor Rutledge warned him that, if he continued using such language, more serious action might be taken.

The incident which led to the instant dispute took place about a month later, on August 17, 1998. After the Claimant "several times used the Lord's name in vain," Supervisor Rutledge again verbally reprimanded the Claimant and asked him to refrain from the use of this type of language. The Claimant advised his Supervisor that all the words he was using were in the bible and that they were not inappropriate. Supervisor Rutledge informed the Claimant that he would not tolerate such language,

whereupon the Claimant, according to Supervisor Rutledge, stuck his finger in his Supervisor's face and stated, "I guarantee you Mister, if you ever say anything to me again about this kind of language in another meeting when other people are cursing. And then he would be going straight to labor relations complaining that I was singling him out." The Claimant then left the meeting.

Other Carrier witnesses present at this meeting describe the Claimant as "outspoken" but stated that they did not see the Claimant put his finger in Supervisor Rutledge's face. Telecommunications Foreman R. Best testified that there were other individuals using profanity at that same meeting and "nobody was reprimanded when these occurred." Foreman Best also stated that the Supervisors had been trying to formulate the parameters of acceptable language because there were many questions from employees as to how to define profanity.

Radio shop foreman D. Jouppe testified that the Claimant used some profanity at the August 17 meeting, "but I think a lot of us used some of the same words and probably in the safety meetings in the past." Both Foremen testified that the Claimant had been an excellent worker for over 30 years at the time of this incident.

Two co-workers, D. Birdsall and E. Knapton, were also present at the August 17 safety meeting. They stated that they did not see the Claimant take any physical action toward his Supervisor, using a finger or otherwise.

The Carrier has Rules of Conduct prohibiting discourteous behavior and informing employees that they must refrain from using profane language. In addition, employees are required to comply with instructions from Supervisors. The Board concludes that the Claimant's behavior on August 17, 1998 violated those Rules. He had been cautioned earlier about using profanity and his outburst was an unacceptable breach of behavior.

While the Claimant's questionable exercise of judgment warranted the imposition of discipline, the Board is convinced that mitigating circumstances are present which ultimately require a less serious penalty than the 30-day suspension imposed. The Claimant is a 33-year employee with a good work record. The use of profanity was apparently tolerated by Management for many years, and employees continued to "slip up" even after the issuance of the "no profanity rule" by injecting obscenities into their work parlance. Moreover, there is a real question on this record

as to whether substantial evidence supports the conclusion that the Claimant used any physical gestures when addressing his supervisor.

Finally, the cases cited by the Carrier in support of the discipline are distinguishable from the instant matter. In the cases cited, the employees heaped verbal abuse and threats upon fellow employees or Supervisors. (See, Third Division Award 33219) (employee over the course of several days repeatedly harassed a co-worker, calling him a "retard" and a "son-of-a-bitch"); (Third Division Award 33378) (employee threatened to kill his supervisor); Third Division Award 31517 (employee called fellow worker a "miserable bitch," a "real pain in the ass," an "idiot" and told her to get her "God damn head out of [her] ass.") By contrast, the Claimant's use of profanity was not directed at anyone in particular and although he clearly exhibited frustration with the "no-profanity" Rule, his actions were more a mark of irritation than a threat to supervision.

Accordingly, while the Board finds that the Claimant's actions were improper, the imposition of a 30-day suspension was arbitrary and capricious. A seven-day suspension would have driven home the point that the Claimant needed to clean up his act and correct his behavior. The Claimant shall be paid the appropriate straight time rate for all time lost beyond seven days.

### **AWARD**

Claim sustained in accordance with the Findings.

### **ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February, 2002.