

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14085
Docket No. 13987
14-2-NRAB-00002-140018**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen-Division of TCU/IAMAW
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe violated the terms of our current Agreement, in particular Rule 40, when on February 25, 2013, Carman Jack Forrester was issued discipline in the form of a 30 Day Level S Record Suspension and a three (3) year review period for alleged gross misconduct while using vulgar and obscene language directed at a workgroup of employees on December 3, 2012.**
- 2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman Jack Forrester, of all reference of the discipline assessed.”**

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.

The Claimant was assigned as a Carman at the Carrier's facility in Kansas City, Kansas. The Claimant was assessed a 30-day record suspension with a three-year review period following a formal Investigation in connection with the following:

“. . . your alleged gross misconduct while using vulgar and obscene language directed at a workgroup of BNSF employees at the building ID lunchroom, Kansas City, KS, at approximately 0730 hours on December 3, 2012.”

At the formal Investigation, General Foreman Murray testified that on the morning of December 3, 2012, he was notified by Carman Wade that the Claimant had come into the lunchroom after the start of the shift briefing in an aggressive and confrontational manner and stated that some “pussy bitch” had unplugged the refrigerator and ruined his food. Carman Wade also told the General Foreman that he felt that the Claimant had singled him out and continued to yell vulgar comments at the other Carmen in the room. General Foreman Murray further testified that he instructed the Claimant to come to his office to discuss the incident. The General Foreman described the Claimant as “erratic and angry” and also testified that the Claimant admitted to using vulgar language. Also entered into the investigatory record were statements from the eight Carmen present during this incident, all of which confirmed that the Claimant had entered the lunchroom yelling and cursing and accusing everyone present that they had unplugged the refrigerator.

When the Claimant testified at the formal Investigation, he stated that he believed that the unplugging of the refrigerator was a deliberate act of vandalism directed at him. Contrary to the testimony of General Foreman Murray and the statements of the eight eyewitnesses to the incident, the Claimant denied using vulgar and obscene language.

While there is an obvious conflict in testimony, the Board notes that there is a long line of arbitral Awards upholding the principle that the Board, in its appellate capacity, is not empowered to overturn the Carrier's determination of credibility so long as there is no evidence that such determination was made in an arbitrary or capricious manner. There is no such evidence present herein. Accordingly, the Board finds that the evidence of record is clear and substantial that the Claimant violated the

Carrier's Rules when he addressed his co-workers in an aggressive manner and used vulgar and obscene language.

Relative to the discipline assessed, the Carrier notes that a 30-day record suspension with a three-year review period was warranted and was consistent with the guidelines for "serious violations" as set forth in its Policy for Employee Performance and Accountability (PEPA). The Board finds that the Claimant's behavior and use of vulgar and obscene language constituted a serious violation of the Carrier's standards for its employees and went well beyond "common everyday shop talk" as posited by the Organization. Under such circumstances, the Board finds no reason to disturb the discipline assessed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of November 2014.