

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14095
Docket No. 13971
14-2-NRAB-00002-130022

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 25 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation held on September 4, 2012 at Denver, Colorado, unjustly and arbitrarily assessed Telecommunications Department Maintainer II Buck W. Rinehart the ultimate discipline of being dismissed from employment from the BNSF Railway.
2. That accordingly, this Honorable Board overturn the guilty decision rendered by BNSF, and further order that the BNSF Railway Company promptly return Maintainer II Buck W. Rinehart to its service and to make him whole for any and all lost wages, rights, benefits and privileges which were adversely affected as a result of the unjust assessment of discipline and that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 25 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.

According to the record before the Board, Telecommunications Department Maintainer Rinehart was dismissed from service by letter of September 21, 2012, as a result of Rules violations involving inappropriate behavior with fellow Maintainer Melvin Valdez at the Carrier's Denver, Colorado, operations. At the time of his separation, although the Claimant had been a BNSF employee for approximately six years, he had transferred to Denver on December 5, 2011. Upon careful consideration, for the reasons that follow the Organization's claim on his behalf will be partially sustained.

The very substantial record before us indicates that the Claimant's termination was predicated upon an ongoing pattern of behavior in which the Carrier contends he failed to treat co-worker Valdez with dignity and respect. Both, it argues, were in violation of the employer's basic Rule 1.6 – Conduct, banning “[a]ny act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees.” Additionally, both were inconsistent with the Carrier's Workplace Harassment Policy 90.2 expressing absolute intolerance of any “verbal or physical conduct by any employee which harasses, disrupts or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment.”

The events at the center of this dispute, according to the record, occurred during the same week in August, coming to the Carrier's attention on August, 21, 2012. In the first, the Claimant is alleged to have essentially lost patience with Valdez when he perceived him to be slow in responding to a question he had put regarding the logbook of a truck. After Valdez appeared to waiver on whether he had or had not driven the truck, the Claimant, according to the testimony of Electrician Tevis Sherman, pressed him along the following lines:

“Melvin said that he did drive the truck and he had the logs to show it. Then a little later Melvin said that he might have messed up and that he didn't have any records . . . of driving the truck . . . Buck started to inquire . . . why he said he did drive when he didn't. Melvin tried to explain that he messed up and had to redo some pages of the log book

that he didn't do right and was looking at the wrong book. Buck asked him again . . . Melvin was a little flustered and tried to explain . . . Buck kept asking him, did you drive the truck in June, yes or no, that's all I'm asking . . . Buck kept cutting him off . . . [h]e wasn't yelling at him, he just sounded very irritated”

The second matter at issue took place when the Claimant is described as yelling at Valdez in a tower approximately 245 above ground after Valdez, who was hired on May 1, 2012, says he had difficulty “get[ting] around a standoff and figur[ing] out the work position” without assistance. According to Valdez:

“This act was unsafe and his behavior was unacceptable. I kept my wits, finished the job with him and climbed down the tower. I'm under a constant negative microscope from Buck. I've lost full trust and respect for him. I gave him many opportunities to make things right. I expressed to him I didn't like how he speaks down to me, and I've never been belittled at any facet of my life. Sarcasm is heavy from Buck at this point. He intentionally changes tone to that of a school grade child when coaching, even asked if the ‘F’ word offends me”

The record groans with additional detail from the testimony of Valdez, Electrician witness Tevis Sherman and Carrier Project Manager Wentland ascribing a nasty and sarcastic demeanor demonstrated by Rinehart toward Valdez. And while the testimony of Wentland is second hand, and that of Rinehart dismissive of the seriousness of these matters, the detailed and comprehensive written statement supplied by Valdez contemporaneously with his complaint puts the tin hat on it. Considered objectively, in our judgment the record proves beyond argument that the Carrier's Hearing Officer had ample grounds to credit Valdez's testimony and discount that of the Claimant, who broadly concedes the salient facts but insists that matters were “blown out of proportion.”

Bluntly, we are at a loss to understand the discourteous behavior, conclusively proven, at the center of this dispute. On balance, notwithstanding Valdez's sincere efforts to establish a good working relationship with the Claimant even in off-hours as he served in his first three months of employment, the Claimant's conduct demonstrates something between “tone deaf” and “raised by wolves.” It was, at minimum, highly inconsistent with BNSF's value system.

The Organization argues forcefully, however, that although it may have been insensitive and uncivil, at the end of the analysis the conduct complained of involved neither fighting, unauthorized touching or other “immorality,” no violence or threats of violence nor any race-based harassment. It was, purely and simply, quarrelsome and even occasionally intimidating, and thus offensive to Rule 1.6, but it did not warrant dismissal.

There is record support for that angle of vision. It can be seen, for example, in the testimony of Electrician Sherman. With respect to the logbook incident he observed, he states that:

“Buck’s tone started to rise as they continued the conversation. He wasn’t yelling at him, he just sounded very irritated and the tone in his voice rose . . . I could definitely see how it could be disrespectful. As far as threatening, I can’t speak for Melvin, but I was right there and I mean, . . . I have respect for both these guys, if I felt that it was going to escalate to a threatening manner then I feel like I would have . . . to diffuse it, but I . . . didn’t feel there was a threat to Melvin at that point, no.”

The Claimant’s service reflects one prior Level S serious offense. Accordingly, in view of that record, and giving full account to both the Carrier’s narrative demonstrating the seriousness of the damage done to the workplace environment by the Claimant’s conduct and the Organization’s arguments in favor of a more temperate response, we will partially sustain the claim. The now nearly two-year separation should be a sufficiently severe penalty to impress upon Rinehart the imperative of maintaining higher standards for himself in interacting with work colleagues. The Claimant shall be restored to his prior position without back pay or benefits, but with seniority intact on a “Last Chance” basis with dismissal converted to Level S (serious) with a 36-month review period. He should clearly understand that any repetition of this or similar conduct in the future, including any recrimination against Valdez, including even mild sarcasm or any other form of taunting or disrespect, will result in further immediate termination.

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 17th day of December 2014.