

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14110
Docket No. 14000
14-2-NRAB-00002-140031**

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 BNSF Railway Company violated the terms of the current agreement, in particular Rule 35, when on May 29, 2013, the Carrier issued a Level S thirty (30) day record suspension with a three (3) year review period to Carman Beverly Corral for alleged discourteous and boisterous behavior and use of profane language with another employee on February 17, 2013.**
- 2. That accordingly, the Carrier be ordered to remove the suspension and all record of this discipline from Claimant’s personal record.”**

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 in Cicero, Illinois. 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 discourteous and boisterous behavior and use of profane language at approximately 2220 hours on Sunday, Feb. 17, 2013, when you had a discussion between yourselves in the presence of Carman Alessandri in the Cicero Trainyard while you were employed as carman (Cicero Yard).”

The underlying facts are that on February 17, 2013, the Claimant and Carman Allesandri were assigned to work at the east end of the Cicero Yard when a dispute arose with another co-worker, Carman Bohlen, who was assigned to work the west end of the yard. The dispute centered on who would use the larger of the two trucks that were available at the yard. The discussion became quite heated and the Claimant called Mechanical Foreman Wakely to complain that Carman Bohlen was yelling at her. Mechanical Foreman Wakely instructed both employees to report to the office to discuss the matter. After meeting with both employees, in the presence of Manager Sadler, Foreman Wakely allowed both to return to work.

The gravamen of this dispute revolves around the nature and content of the discussion between the Claimant and Carman Bohlen, who admitted his responsibility in the matter and waived his right to a formal Investigation and accepted a 30-day record suspension with a three-year review period. Specifically, the issue is whether the Carrier provided substantial evidence of a credible nature to support its findings that the Claimant exhibited boisterous and discourteous behavior and used profane language in her dealings with Carman Bohlen on the night in question. As noted, Carman Bohlen acknowledged being loud, boisterous and profane; however, the Claimant, while admitting that there was a disagreement over the use of the trucks, denied that she was loud or argumentative and while stating that she told Carman Bohlen that he was ignorant, the Claimant denied using any profanity.

The Board recognizes that its scope of review in discipline cases is limited and that the Board does not resolve at this appellate level pure conflicts of testimony or credibility. However, it is equally established that the Board must inquire as to whether the evidence adduced at the Investigation reasonably supports a finding of the Claimant's culpability. In cases where the Hearing Officer's determination is not supported by substantial evidence of a credible nature, the Board has not been remiss

in its obligation to reverse the disciplinary decision. For the reasons hereinafter noted, the Board finds that this is the case herein.

Even assuming that there is a great degree of self interest in the Claimant presenting a defensible position, there is other evidence present that supports the Claimant's version of the events. In particular, Carman Allesandri – the only disinterested eyewitness to the confrontation – testified that the Claimant did not use any boisterous or profane language and, for the most part, did not raise her voice or yell or scream at Carman Bohlen. On the other hand, Carman Allesandri stated that it was Carman Bohlen who initiated the dispute, raised the level of discourse, used profane language and made inappropriate sexual references. Carman Allesandri testified it seemed that the Claimant was “in fear for her safety.” The Board has also taken note of the testimony of Messrs. Wakely and Sadler relative to their assessment of the demeanor of the two individuals when they discussed this matter in the office. Their impressions were that Carman Bohlen was “standoffish, a little rough” with an attitude that he “was right in every sort of way” while the Claimant was clearly upset “to the point of tears.”

Based on our review of the entire record, the Board finds that while the Claimant could have better handled the situation when first confronted by Carman Bohlen, the evidence does not support the Carrier's conclusion that the Claimant was guilty of the offenses with which she was charged. Accordingly, the Board finds that the Carrier failed to satisfy its burden of proof and rules that the discipline must be removed from the Claimant's record.

AWARD

Claim sustained.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of December 2014.