

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14156
Docket No. 14038
16-2-NRAB-00002-150001**

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(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 June 12, 2013 in Memphis, Tennessee, unjustly assessed Telecommunications Department Electronic Technician Cory Carpenter the ultimate discipline of being dismissed from employment of the BNSF Railway Company.**
- 2. That accordingly, this Honorable Board overturn the decision rendered by the BNSF Railway Company, and further order that the BNSF Railway Company promptly return Electronic Technician Cory Carpenter to its service and 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.

Claimant was notified by letter dated May 21, 2013:

“An investigation has been scheduled at 1000 hours, Thursday, May 30, 2013, at the Fogelman Executive Conference Center, 330 Innovation Drive, Memphis, TN, 38152, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged creating a hostile work environment, quarrelsome and discourteous conduct, and threat(s) of violence when you allegedly made inappropriate, intimidatory comments to another employee on May 9, 2013. The date BNSF received first knowledge of this alleged violation is May 20, 2013.

This is to advise that CORY CARPENTER is being withheld from service pending results of investigation.

Contact Greg Britz at XXX-XXX-XXXX with any questions regarding this investigation, postponement or waiver.

Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the Labor Agreement.”

Investigation was held after postponement on June 12, 2013, and Claimant was notified by letter dated July 2, 2013:

“As a result of investigation held on Wednesday, June 12, 2013 at 1100 hours at Fogelman Executive Conference Center, 330 Innovation Drive

Room 325, Memphis, TN, 38152 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for creating a hostile work environment, and quarrelsome and discourteous conduct when you made inappropriate, intimidatory comments to another employee on May 9, 2013.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct and HR 90.2 Workplace Harassment Policy.

In assessing discipline, consideration was given to your personnel record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative. This letter will be placed in your personnel record.

Please arrange to return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you.”

The Claimant, a short service employee was discharged for creating a hostile work environment while making inappropriate, and intimidatory comments to another employee.

The Organization argues that the Carrier unjustly dismissed the Claimant following an investigation that was neither fair nor impartial, as mandated by Rule 25 of the Controlling Agreement. The Union further argues the only evidence against the Claimant is testimony from a fellow employee.

The Carrier notes that Mr. Harris’s statement was further supported by statements by two other employees, and the Claimant’s foreman. Where there can be no doubt there is contradictory testimony in the transcript of the Investigation, legions of awards in this industry have held that it is the Hearing Officer and not

Boards such as this one which determines credibility of witnesses. Second Division Award 13748 held, "It is well established the responsibility for determining credibility rests with the Hearing Officer unless there is substantial evidence that the conclusions arrived at are erroneous or biased. We do not find such evidence here."

The Board has in detail reviewed the entire record before us. The Board does not find any violations of the Claimant's due process rights. The Carrier has through a preponderance of evidence met their burden of proof. In such a safety sensitive industry, any threat or perceived threat is taken most seriously. As the Carrier has met their burden of proof, the discipline assessed is not inappropriate and will not be disturbed.

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 20th day of December 2016.