

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37813
Docket No. MW-38684
06-3-05-3-59**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The dismissal of Bridgeman C. Wilkerson on December 9, 2003 for an alleged violation of New Orleans Public Belt’s General and Safety Rule 1.6 CONDUCT, for allegedly engaging in insubordinate and quarrelsome behavior with General Manager J. Bridger at a Safety Committee meeting on December 9, 2003, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File JFNOPB-04-01].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant C. Wilkerson shall have the charges removed from his record and he shall be reinstated to service with all rights and benefits restored and compensated for all lost wages beginning December 10, 2003 and continuing.”**

FINDINGS:

The Third 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.

By letter dated December 9, 2003, the Claimant was notified that he was being dismissed from the Carrier's service on grounds that he engaged in insubordinate and quarrelsome behavior toward the Carrier's General Manager during and after the Carrier's monthly Employee Safety Committee Meeting, in violation of Rule 1.6 CONDUCT. On December 10, 2003, the Claimant requested a formal and impartial Hearing on his dismissal. On December 11, 2003, the Claimant was issued a Notice of Investigation that scheduled a Hearing into this matter, as the Claimant had requested. After two postponements, the Hearing was conducted on January 20 and 21, 2004. By letter dated January 30, 2004, the Claimant was notified that as a result of the Investigation, the Carrier's decision to dismiss had been sustained. The Organization thereafter filed an appeal challenging the Carrier's decision to discharge the Claimant. The Carrier denied the appeal.

The Carrier initially contends that the evidence thoroughly documents that the Claimant was in violation of Carrier Rule 1.6 as charged. The Carrier insists that during the safety meeting, the Claimant was clearly quarrelsome and discourteous toward the General Manager, and the Claimant was insubordinate when he refused to obey the General Manager's instructions to be quiet and listen to what the General Manager had to say about the issues that the Claimant had raised. The Carrier further asserts that the Claimant clearly was disloyal to the Carrier when he admittedly contacted the New Orleans Metropolitan Crime Commission to report that senior management officials were stealing money and covering up derailments that should have been reported. The Carrier points out that the Claimant could not substantiate any of his allegations.

The Carrier asserts that many of the attendees at the meeting testified during the formal Investigation herein about the Claimant's very combative conduct toward the General Manager. These witnesses also testified that the Claimant

would not obey the instructions of the General Manager when he repeatedly asked the Claimant to be quiet and listen to the explanations. The Carrier argues that several witnesses testified that the Claimant became so quarrelsome and argumentative that the meeting had to be stopped and the Claimant removed. The Carrier maintains that the General Manager's testimony demonstrates that he went to extraordinary lengths during previous meetings and conversation with the Claimant to address the Claimant's concerns. The Carrier argues that the Claimant's combative behavior during the safety meeting, and his demonstrated disloyalty to the Carrier when he called the crime commission with false accusations, was a very serious offense. Moreover, the Claimant had been warned that if he continued with his unsubstantiated accusations toward the Carrier, he could land in serious trouble.

Addressing the Organization's assertion that the Carrier committed a procedural error when it denied the Claimant's request for an Organization representative at the time he was instructed to leave the safety meeting, the Carrier argues that the General Manager's intent at that point was to merely separate the Claimant from the safety meeting so that the meeting could continue and the Claimant could regain control of himself. The Carrier insists that the General Manager did not intend to discuss any matters with the Claimant that would have required an Organization representative. The Carrier points out that when the Claimant thereafter continued his combative tone with the General Manager, the Claimant was instructed to go home and that he would be compensated for the rest of that day. The Carrier emphasizes that there is no Agreement provision that gives an employee the right to Organization representation every time it is requested. The Carrier insists that management always has maintained the right to talk with employees without having an Organization representative present. The Claimant, in fact, had several one-on-one discussions with the General Manager without an Organization representative being present. The Carrier maintains that it has a practice of including Organization representatives in meetings that involve matters that pertain to the Organization or require the Organization's presence. The General Manager's discussion with the Claimant, in which he instructed the Claimant to leave the safety meeting, did not require the Organization's presence. The Carrier contends that the Organization's allegation of a procedural error should be rejected.

As for the Organization's argument that the Claimant was dismissed from service without being afforded a fair and impartial Investigation, the Carrier

emphasizes that the Agreement provides that an employee may request a formal Investigation if the employee believes that discipline he or she received was unjust. The Carrier insists that it complied with the Claimant's request for a formal Investigation, which was conducted in a very fair and impartial manner. The Carrier additionally argues that the Hearing Officer issued a decision sustaining the Claimant's dismissal only after thoroughly examining the Investigation transcript and the Claimant's personal record. The Carrier points out that the Claimant's personal record reveals a very poor disciplinary history. The Carrier maintains that its attempts at progressive discipline with the Claimant have not had the desired effect, and the Claimant's behavior has not improved. The Carrier argues that the offense at issue was egregious, and the Claimant's dismissal was warranted.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that although a proven instance of willful and unjustified insubordination warrants issuance of some level of discipline, and even dismissal in some cases, the record in this matter clearly shows that such is not the case here. The Organization argues that there has been no showing that the Claimant refused to obey or failed to comply with any order or instructions issued by any Carrier manager or supervisor. The testimony of all the witnesses confirms that both the Claimant and the General Manager passionately debated their respective positions and stated their opinions during the safety meeting, and that they each elevated their voices during this debate. The Organization points out that the safety meeting supposedly was an open forum where attendees were encouraged and expected to freely and actively participate. The Organization asserts that if the Carrier managers wanted to be told only what they wanted to hear and did not want the Claimant to offer input or opinions at the safety meeting, then they should not have invited the Claimant to attend the safety meeting.

The Organization goes on to assert that the witnesses also confirm that during the subsequent meeting held in the General Manager's office, the Claimant did not argue or respond to the General Manager. This testimony clearly refutes the portion of the charges stating that the Claimant allegedly engaged in insubordinate and quarrelsome behavior while in the General Manager's office. The Organization further contends that even if the Claimant's behavior could in some way be construed as insubordinate or quarrelsome, the General Manager clearly instigated the dispute and was an active participant in the exchanges between the two, so the

General Manager was at least as responsible as the Claimant. The Organization maintains that the General Manager should be held to the same standard as the Claimant.

The Organization goes on to maintain that the Carrier inappropriately entered the Claimant's "personal record" into evidence subsequent to the Investigation in this matter. Moreover, the Carrier chose to produce only the Claimant's alleged "previous five-year personal record summary," and not his entire 24-year career personnel record. The Organization therefore argues that this omission leads to the reasonable conclusion that a review of the Claimant's entire work history would not support the Carrier's attempt to portray the Claimant as a "problem" employee.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board reviewed the procedural arguments raised by the Organization, and finds them to be without merit.

The Board also reviewed the evidence and testimony in this case, and finds sufficient evidence in the record to support the finding that the Claimant behaved in a quarrelsome and abusive manner with his General Manager at a safety committee meeting on December 9, 2003. A review of the lengthy transcript makes it clear that the Claimant behaved improperly and subjected himself to discipline.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case did not act properly and certainly deserved severe discipline. However, the record reveals that the Claimant had been employed by the Carrier for more than 24 years. There is no question that he acted in a loud and boisterous manner and embarrassed the Carrier. He deserved punishment for that,

but the Board finds that dismissal of this 24-year employee was unreasonable and must be overturned.

The Board finds that the Claimant was deserving of a lengthy disciplinary suspension for his poor behavior on the date in question. Therefore, we hereby order that the Claimant be reinstated with no backpay and the period that he was off shall be considered a lengthy disciplinary suspension.

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 Third Division**

Dated at Chicago, Illinois, this 21st day of June 2006.