

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42366
Docket No. MW-42511
16-3-NRAB-00003-140140**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(BNSF Railway Company (former Burlington
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. P. Gil by letter dated December 28, 2012 for alleged violation of MOWOR 1.6 Conduct and MOWOR 1.7 Altercations in connection with alleged ‘. . . quarrelsome and discourteous conduct towards each other at the BNSF WyoBen Building, 106 North Gillette Ave, Gillette Wy on November 26, 2012 ***’ was without just cause, excessive and in violation of the Agreement (System File C-13-D070-2/10-13-0189 BNR).**
- (2) The discipline (dismissal) imposed upon Mr. G. Basham by letter dated December 28, 2012 for alleged violation of MOWOR 1.6 Conduct and MOWOR 1.7 Altercations in connection with alleged ‘. . . quarrelsome and discourteous conduct towards each other at the BNSF WyoBen Building, 106 North Gillette Ave, Gillette Wy on November 26, 2012 ***’ was without just cause, excessive and in violation of the Agreement.**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant P. Gill shall be reinstated to service and receive the remedy prescribed by the parties in Rule 40.**
- (4) As a consequence of the violation referred to in Part (1) above, Claimant G. Basham shall be reinstated to service and receive the remedy prescribed by the parties in Rule 40.”**

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.

On November 26, 2012, just after the morning briefing, the Claimants became involved in an altercation. Claimant Gil said he poked Basham in the stomach and made a comment about his Thanksgiving eating. Basham then pushed Gil against the wall and tried to put him in a headlock. The two wrestled until Roadmaster Seagroves stepped between them and broke up the altercation. Basham then told Gil "I'm going to fuck you up if we get out of there." The Claimants were sent to their assignments and later withheld from service pending investigation. The employees were ultimately found to have violated MOWOR 1.6 and 1.7 and were dismissed.

The Carrier notes the Claimants themselves admit they engaged in the altercation. Violence and threats of violence at work cannot be tolerated. Gil testified that he asked Basham to settle down while Basham repeatedly told him he was going to "fuck me." Gil said he tried to get away but Basham would not let go and had his arms pinned. When they did split, Basham pushed him against the wall again until Seagroves broke them up. When asked why he would not let go of Gil, Basham said "He had me up against the wall. He could have let go of me at any time." Both employees admitted wrestling with each other.

MOWOR 1.7 specifically states "Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property." In addition, BNSF has a "Violence in the Workplace Policy" that puts employees who engage in violent or threatening behavior on notice of dismissal and possible criminal prosecution. The Workplace Harassment Policy prohibits threatening conduct as well. Both employees were under a review period for a Level S violation.

Though they did continue working that day, they were on separate assignments. They did not work together so safety was not as much of a concern. The incident occurred at the morning job briefing which is repeated every day. All contact was eliminated until the investigation was held.

It is the Organization's position neither employee was withheld from service on November 26. If it were a genuinely serious safety situation, the employees would have been removed from service immediately, not the next day. Violating the rule on wrestling does not rise to the level of dismissal. This was horseplay; that is why the employees were allowed to complete their shifts.

Though employees in the area claimed to have seen virtually nothing and Seagroves arrived as the altercation was ending, the employees admitted to their conduct. The Carrier has substantial evidence that the two employees were engaged in wrestling at the very least, which is a violation of Rule 1.7. In addition, the verbal exchange rose to the level of verbal threats in violation of the Violence in the Workplace Policy. Both employees were under a review period for serious violations. Under these circumstances, the Carrier must be deemed to have met its burden of proof.

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 Third Division**

Dated at Chicago, Illinois, this 30th day of August 2016.