

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42816
Docket No. MW-42956
17-3-NRAB-00003-140409**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) consecutive days suspension and restriction of one (1) year placed upon foreman seniority] imposed upon Ms. L. Brisbois by letter dated August 30, 2012 for alleged violation of GCOR Rule 1.6 Conduct and Rule 1.13 Complying with Instructions was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-23-12-510-02/8-00537 CMP)
- (2) As a consequence of the violation referred to in Part (1) above, all reference to the aforesaid discipline shall be removed from Ms. L. Brisbois’ record and she shall receive ‘. . . all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, and excessive discipline in assessing claimant a five (5) working day suspension, and restricting her seniority as a foreman as set forth in Carrier’s hearing decision dated August 30, 2012, as well as for all time lost when claimant was improperly sent home on July 12, 2012 as requested by the Organization on page 142 if the hearing transcript. ***”

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 July 18, 2012 Claimant was instructed to attend an investigation hearing on July 31, 2012, which was mutually postponed and held on August 17, 2012 for the purpose of developing all pertinent facts in connection with an alleged incident that took place on July 12, 2012 on the Merriam Parks sub where she became quarrelsome, discourteous, and insubordinate while working as a Foreman on the P2 tie crew. In a letter dated August 30, 2012 the Claimant was notified that she had been found guilty of violating GCOR Rules 1.6 – Conduct and 1.13 –Reporting and Complying with Instructions. The Carrier issued the Claimant a five day suspension and suspended her Foreman seniority for one year. The Organization filed an appeal on behalf of the Claimant on November 1, 2012.

On July 12, 2012, the Claimant was working as a Foreman within St. Paul Yard. The Claimant was responsible for on-track protection and safety of the work crew she was helping direct. During the morning safety briefing, the Claimant cautioned the employees to stay clear of the tracks unless instructed otherwise. After the briefing, the crew split up and Mr. Heath gave permission to several in his portion of the crew to enter the track to perform their duties. The Claimant saw employees on the track and, according to her testimony, became concerned. She addressed it with the employees at the next job briefing. Mr. Heath told the Claimant that the tracks they were on were locked out so there should be no issue with their entering the track. Mr. Heath also told the Claimant to have further discussions regarding her concerns with the employees who had been on the track. Mr. Heath testified that he explained all of this to the Claimant several times but she became argumentative with him and would not let the issue drop. Mr. Heath eventually told the Claimant he would not discuss it any further and that if she continued he would send her home. The

Claimant failed to follow his instruction to talk with the employees who fouled the track and continued to be argumentative. Mr. Heath eventually sent her off duty for the remainder of the shift.

The Carrier asserts that at the time of this incident, Mr. Heath was the Claimant's direct supervisor. Failure to follow his instructions is an act of insubordination. Mr. Heath made several attempts to end the discussion and eventually gave her a clear directive to "stop arguing." The Carrier argues that being quarrelsome, discourteous, and not following instruction is a terminable offense. It therefore, deems a five day suspension an acceptable discipline given the circumstance.

The Organization contends the claim should be sustained because (1) the Claimant was not afforded a fair and impartial hearing and (2) the discipline assessed was arbitrary and unwarranted. The Organization argues the Claimant was trying, unsuccessfully to bring forward her safety concern and that the matter was not being adequately addressed. The Organization points out that other witnesses dispute the contention that the Claimant became quarrelsome.

The Board has reviewed the record in this matter and can find no evidence that the Claimant received either an unfair or biased hearing. Each party was given ample opportunity to present and examine witnesses. As to the merits, there is sufficient evidence to support the charges against the Claimant. Mr. Heath testified at length concerning the Claimant's behavior. He gave her several chances to stop the interaction, including giving her a direct order to stop, yet she pressed on. While the Claimant denies Mr. Heath's testimony, the Board has generally held that credibility issues are to be made by the Hearing Officer. (See Third Division Award 29077).

It is evident on the record before us that the Claimant's conduct was argumentative and insubordinate. She was combative with her supervisor. The discipline issued was warranted for the behavior. The Board can see no reason to overturn the Carrier's assessed discipline.

AWARD

Claim denied.

**Form 1
Page 4**

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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 28th day of November 2017.