

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44645  
Docket No. MW-46104  
22-3-NRAB-00003-200258**

**The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railroad)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. R. Steckman, by letter dated October 16, 2018, for alleged violation of MWOR 1.6 Conduct and MWOR 1.7 Altercations in connection with his alleged misconduct when he created a hostile and quarrelsome work environment on September 13, 2018 at approximately 1700 hours on the Clifford Subdivision near Mile Post 8 when he allegedly engaged in a verbal and physical altercation with a fellow employee was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-5699-M/11-19-0118 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Steckman shall be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses, benefits and 401K.”**

**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.

Claimant Ryan Steckman, a Group 3 Machine Operator, was hired on April 8, 2014 and has established and holds seniority within the Carrier's Maintenance of Way Department. He previously had a clean disciplinary record. The Claimant became involved in an altercation with his Foreman, Brad Gregg. According to the Carrier, the two were working shorthanded and decided to tow a regulator in order to clear the tracks for the night. A tow bar was retrieved, the two men disagreed on how to proceed and the Claimant dropped his end of the tow bar. When instructed to pick up the tow bar and proceed, the Claimant profanely refused and profanely told the Foreman to move the regulator closer. When Foreman Gregg dropped his end of the tow bar, the bar hit a rail and bounced up and hit the Claimant in the leg, after which the Claimant yelled at the Foreman, approached and pushed him, causing the Foreman to fall on the ballast and suffer abrasions. The Claimant then asked if the Foreman wanted to fight, but Mr. Gregg walked off to contact his Roadmaster. The Foreman's written statement added that the Claimant got in his face when he asked if the Foreman wanted to fight and that the Claimant ran up to Foreman Gregg and pushed him.

The Claimant's written statement indicated that he was concerned about the safety implications of the Foreman's procedure. The Foreman threw a tantrum and threw down his end of the tow bar, which caused the Claimant's end to come out of his hand, hit the rail and then hit the Claimant's leg. When the Foreman used profanity toward the Claimant, the latter lost his cool, pushed the Foreman, who had gotten in the Claimant's face, and told the Foreman to clock him out. The Claimant then left the area.

By letter dated September 14, 2018 the Claimant was informed that an investigation had been scheduled and that he was being withheld from service pending results of the investigation. Foreman Gregg was allowed to waive an investigation and was assessed a Standard Formal Reprimand. Following the investigation, the Carrier concluded that the Claimant had violated MWOR 1.6 Conduct and MWOR 1.7

Altercations and assessed a dismissal. The resulting claim was timely filed and properly processed on the property without resolution and thereafter progressed to this Board for final and binding adjudication.

The Carrier contends that the investigation was fair and impartial and that withholding an employee from service does not constitute prejudgment. Moreover, there was no prejudice to the Claimant's rights. Rule 40 does not mandate pre-investigation discovery. The Carrier obtained substantial evidence of the violations with the Claimant's admission that he and Foreman Gregg had an altercation and that he pushed the Foreman.

The discipline assessed for the violation of MWORs 1.6 and 1.7 was in accordance with the Policy on Employee Performance Accountability (PEPA). The Carrier has an obligation to provide a safe work place for its employees. If the claim is sustained, the Board should deny damages as the Carrier should not be held responsible for the Claimant's lack of diligence.

The Organization asserts that the investigation was not fair and impartial and that the Claimant was prejudged when he was removed from service for what the Organization characterizes as a non-serious infraction. The Claimant was disparately treated because Foreman Gregg, who provoked the incident, was allowed to waive an investigation and was assessed a Formal Written Warning. The Conducting Officer did not issue the discipline, yet Foreman Gregg's testimony was deemed credible. The Organization had to try to negotiate a waiver with the Division Engineer, who aided the Carrier witness set up and print the exhibits. The Carrier ignored the Organization's request to provide Foreman Gregg's record and did not call Roadmaster Garcia, who had knowledge of prior incidents involving the Foreman, who also was not called as a witness. The Carrier's April 9, 2019 declination included the Claimant's Employee Transcript and the PEPA, although neither document was submitted during the investigation. The Carrier did not consider the Claimant's unblemished record when it assessed the unjust dismissal. The claim should be sustained to include reimbursement for the days the Claimant was withheld from service and the day of the investigation.

The Board finds the investigation to have been fair and impartial. Rule 40.B. gives the Carrier the right to withhold an employee from service for an alleged serious violation of one or more rules. Engaging physically, as the Claimant admitted, must be considered serious. The altercation involved more than a simple tap on the Foreman's shoulder or a finger in the Foreman's face. The Organization cannot agree

to Rule 40.B. and then, as it routinely does, attempt to nullify the Rule with an assertion of prejudgment.

As the Carrier has stated, the best investigation practice is for the Conducting Officer to issue discipline if in the Carrier's view, discipline is called for. If the Carrier elects to assign two different individuals to perform these two functions, it does so at its peril, particularly if the Board finds a credibility issue to be determinative of the outcome. While the claimant and the Foreman have painted somewhat different pictures of the incident under review, it is undisputed that the Claimant pushed the Foreman causing the fall. The Organization's disparate treatment contention is not persuasive because the Claimant and the Foreman were not equal contributors to the altercation. Moreover, Division Engineer Lynn acted properly in aiding Special Agent Gortmaker organize and present the exhibits she brought to the investigation. Had Mr. Lynn been the Conducting Officer, the investigation would have been tainted such that Rule 40.A. would require that the discipline be set aside because of an unfair and partial investigation, but he was not the Conducting Officer.

For the Board, this matter boils down to the Claimant's undisputed shoving of his Foreman. If the Claimant had a good-faith, sincere belief that the Foreman's plan for towing the regulator was unsafe to the point of placing personal safety at risk, the Claimant would have had the right to express his concern in a temperate manner even to the point of refusing to "work first and grieve later." Just how temperate the Claimant was remains an open question, but it is obvious that the Foreman's original plan was altered. The Board does not find that Foreman Gregg intended for the tow bar to hit the Claimant in the leg and notes that no claim of personal injury was filed. And, it was the Claimant who, in his own words, lost his cool and pushed his Foreman, causing the fall. This was a clear violation of MWORs 1.6 and 1.7. MWOR 1.6 states that "Any act of hostility. . .affecting the interest of the company or its employees is cause for dismissal. . ." PEPA, Section D.1.e lists "Violence in the workplace or instigation of a serious altercation" as a stand-alone violation.

The Board has carefully read and considered the prior Awards in which Boards found Claimants disproportionately disciplined when compared to others with like culpability. In particular we note First Division Award 25054 that reacted to the instance of a fight in which both men pushed, shoved and struck each other, with the claimant dismissed and the other employee suspended for three months. That case is distinguished from the case under consideration herein because we are faced with only one physical response, that being the Claimant's. Whether the Board, left to its own, might have assessed a lesser penalty is beside the point. When the tow bar hit the

Claimant's leg, he had a prudent or an imprudent response to select. Unfortunately, he chose badly. The Board could understand a characterization of the dismissal as harsh, but the discipline cannot be characterized as arbitrary and capricious such that it should be set aside.

**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 15<sup>th</sup> day of December 2021.