

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44844
Docket No. MW-47193
23-3-NRAB-00003-220101**

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

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

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day Level S record suspension with one (1) year review period] imposed upon Mr. J. Yancey, by letter dated July 7, 2020, for alleged violation of MWOR 1.6 Conduct was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-20-D040-19/10-20-0245 BNR).**
- (2) The appeal* as presented by letter dated December 3, 2020 to General Director Labor Relations Joe Heenan shall be allowed as presented because said claim was not disallowed by Mr. Heenan in accordance with Rule 42.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant J. Yancey shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”**

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.

Factual Background:

The Carrier alleges Claimant engaged in quarrelsome and discourteous conduct when he engaged in a verbal disagreement with a Division Engineer after being instructed to drive a section truck and work with new hires on May 28, 2020. Following investigation, the Carrier issued him a thirty-day Level S record suspension with a one-year review period. The Organization has challenged the propriety of this discipline, and the matter is now before this Board of Adjustment.

Position of Organization:

The Organization maintains Division Engineer M. Bishr provoked Claimant's volatile reaction and started the hostile exchange. As the Organization sees it, Bishr was discourteous and argumentative on the date in question; she refused to listen to Claimant or other employees as to why her plan was not the best. The Organization concludes it is unreasonable to blame Claimant entirely for the heated exchange.

Position of Carrier:

On May 28, 2020, Claimant was in a meeting with Roadmaster C. Phillips, Division Engineer M. Bishr, oncoming Division Engineer J. Nelson, along with a number of employees who work in and around Denver, CO. During the meeting, Bishr suggested splitting the work groups in two. Claimant became emotional and animated; he raised his voice at Bishr, and insisted her idea would not work. He said he would not work that way, and would bid off his position if they tried to make him do it. At one point, Claimant got up, said he was going to work with a different gang and began to walk away.

The Carrier refutes the Organization's characterization of Bishr as the aggressor. At the Investigation, Bishr explained that she was the one on the defensive. She asserted she was verbally attacked by Claimant, and said she raised her voice

only because Claimant began to walk away from her during the middle of their conversation.

Although this was a stand-alone dismissible violation, BNSF claims it granted leniency by allowing Claimant the opportunity to retain his employment at BNSF, and only issued a Level S 30-day Suspension with a 1-year review period instead.

Analysis:

The Carrier has met its burden of proof in this case. It is not for the Board to disturb the credibility determinations made as a result of the investigation. Claimant's denial of responsibility for the exchange, and his attempt to blame Bishr was not found credible against the testimony of Division Engineers Bishr, J. Nelson and Roadmaster C. Phillips. We defer to this determination, as we must, and therefore find that the evidence produced meets the Carrier's 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 10th day of March 2023.