

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45255
Docket No. MW-47781
24-3-NRAB-00003-230153**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. A. Schroeder, by letter dated November 17, 2021, in connection with alleged inappropriate and disrespectful behavior on October 10, 2021 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D-65-21-445-26/2022-00026206 CMP).**

- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Schroeder shall now have:**

. . . the dismissal shall be set aside, and all notations of it shall be expunged from all Carrier records, including Claimant’s personal record, and Claimant shall be made whole for any loss he may experience as a result of this assessment of discipline, including compensation for:

- 1) Straight-time compensation for each regular work-day lost, and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the. Time of his dismissal from service. This amount shall not be reduced by an outside earnings obtained by the Claimant while wrongfully dismissed.**
- 2) Any general lump-sum payment and retroactive and/or periodic general wage increases provided in any applicable agreement**

that become effective for the period Claimant was dismissed from service.

- 3) Overtime pay for lost opportunities based on over-time for any position the Claimant could have held during the time he was suspended, or on overtime paid to any junior employee for work the Claimant could have bid on and. Performed had the Claimant not been dismissed from service.
- 4) Health & Welfare, dental, vision, supplemental insurance premiums, deductibles, and co-pays that Claimant would not have paid had he not been unjustly dismissed from service.
- 5) Any and all other benefits to which entitled, but lost as a result of the Carrier's arbitrary, capricious, and excessive discipline in the Claimant's dismissal."

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 Adam Schroeder commenced service with the Carrier on May 14, 2012. At the time of the incident that led to his dismissal, Claimant established and held seniority within the Carrier's Maintenance of Way Department. During the time period leading up to Claimant's dismissal, he was assigned to a Field Director carpenter position. Prior to being dismissed from service Claimant had accrued (9) years of service with the Carrier and had no previous record of discipline.

The record evidence reflects that Carrier received a written complaint dated October 15, 2021, from one, Bridgette Grotjahn, a Front Desk Agent at the Candlewood Suites Hotel in La Crosse, Wisconsin, a lodging facility used by Carrier, regarding a conversation she had with Claimant on October 10, 2021. Although Candlewood Suites is a facility used by Carrier, on October 10th, Claimant stay at the hotel was not provided lodging by Carrier and Claimant did not receive reimbursement for his stay there. The complaint letter, notarized by Carrier reads in its entirety as follows:

On October 10, 2021 at 9:45 PM– 10:30 PM as I was working behind the front desk I was approached by Adam Schroeder. Mr. Schroeder and I were having a casual conversation about his stay at the hotel being extended and why he was extending. We began discussing a house he wanted to build called a “barn dominium” and soon the conversation turned odd. Quickly stopping the conversation, Mr. Schroeder suddenly asked me “what is wrong with you?” He then said “I can tell something is wrong with you, you must have used drugs because your hair is dull and does not shine.” I was asked by him if I am a schizophrenic or bipolar because he could tell I was nervous and sweating on my forehead. Unsolicited, Mr. Schroeder began giving me advice and pointed to my stomach and said “I can see you have a pouch there, watch what you’re eating.” I was growing more and more uncomfortable as he was talking. In the same conversation he asked me how I manage my stress and I was confused by this. Mr. Schroeder explained more what he was asking and literally said “How many times to (sic) you flick your bean? How many times per week?” He added on to that by saying I need “really good sex” to feel calm. Thankfully the phone rang and he finally walked away but not before he said “you know how to get my number!”

Upon receiving Grotjahn’s complaint letter, Carrier directed Amanda Cobb, Manager of Diversity and Inclusion for the Canadian Pacific and Employee Relations for the United States to investigate the matter as performing such investigations Cobb noted fall within her Human Resources job responsibilities. Carrier also directed Karl Rittmeyer, Assistant Chief Engineer, Structures to assist Cobb to validate the comments reported by Complainant Grotjahn in her complaint letter. Cobb learned that Harleigh McKee, Director of Sales for the Candlewood Suites was the person who had facilitated Carrier in receiving Grotjahn’s written complaint and thus contacted McKee by email requesting she and Cobb arrange an interview with Grotjahn. Additionally, Cobb indicated to McKee she wished to discuss with her what the video showed of the interaction between Claimant and Complainant and whether there was audio as part of the video. Finally, Cobb related to McKee she would field any questions McKee or others at the hotel might have about the investigation process. In a response email, McKee apprised she was working on getting the video and would talk with Grotjahn to

determine if she was comfortable with being interviewed. Shortly thereafter, Cobb received a telephone call from the hotel's General Manager, identified only by her first name, as Isabella informing her that Complainant was traumatized by her interaction with Claimant and, as such, was at risk of suffering from a personal issue and was attending to her personal needs. Isabella further related that it would be traumatic in her current state for Complainant to talk with her or anyone else from Canadian Pacific. In the alternative, Isabella arranged to have Complainant's letter notarized in place of holding an interview.

Cobb next telephoned Claimant as part of her investigation to obtain his side of the conversation he had with Grotjahn. In response to Cobb's question if he knew the reason why he was being held out of service, Claimant replied he did not know. When Claimant was asked if he recalled the conversation he had with Grotjahn, he replied, he kind of remembered it. After Cobb provided the prompt of telling Claimant she had received a written statement from Grotjahn recounting a conversation she had with him regarding extending his stay at the hotel and his showing her photos on his phone he was building a barndominium, Claimant then acknowledged recalling the conversation. Claimant related that in this conversation, Grotjahn shared with him that she was a recovering addict and that he told her he had experience with addiction and that she really needed to watch what she eats. Claimant related he also asked Grotjahn how often she takes care of herself explaining his wife's doctor recommended that in taking care of herself she needed to release endorphins. Cobb, seeking clarification of what he was talking about when he referred to releasing endorphins, Claimant acknowledged he was asking Grotjahn how often she masturbates and considered this part of the discussion with her as just giving her advice; although he also acknowledged that discussing this part of the conversation in front of his wife made him feel uncomfortable. Cobb related she told Claimant that his feeling uncomfortable when talking about this part of the conversation in front of his wife should have told him that he should never have had such a conversation with Grotjahn. Cobb then told Claimant his advice to Grotjahn about food and how to manage addiction was borderline but that talking to anyone about masturbation was crossing the line and a violation of Policy 1300. Cobb asked Claimant how their conversation ended and he replied that her phone rang or she got busy. Claimant remembered that his parting comment to Grotjahn was telling her she knew how to get in touch with him if she wanted to talk to him some more.

Policy 1300 that Cobb referenced in her conversation with Claimant addresses the issue of Workplace Harassment Including Sexual Harassment. Specifically, Cobb deemed Claimant's conversation with Grotjahn to be in violation with the following sections of Policy 1300 applicable to all United States employees:

Accountability

- **All employees are responsible for:**

... conducting themselves at all times in a respectful manner towards other employees, non-employees, and applicants for employment

Sexual Harassment

Sexual Harassment consists of unwelcome sexual advances, requests for sexual favors, physical conduct or other conduct when . . . (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

*** * * ***

Depending on the circumstances, sexual harassment can include, but is not limited to, the following behavior:

- **Comments about a person's body;**
- **Suggestive remarks;**
- **Sexual advances;**
- **Inappropriate inquiries into or comments about another's personal life.**

In addition, Carrier also charged Claimant's conduct exhibited toward Grotjahn as being in violation of Rule 1.6 Conduct as set forth in its US Rulebook for Engineering Employees – specifically itemized points 5 and 7 of the Rule which references conduct that is Immoral and Discourteous. The Rule further reads as follows:

Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the Company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

Carrier also cites Rule 1.9 of the Rulebook for Engineering Employees as having been violated by Claimant's behavior exhibited toward Grotjahn which reads as follows:

“Employees must behave in such a way that the railroad will not be criticized for their action.”

The record evidence reflects that Claimant received training with respect to these Engineering Rules and Policy 1300 on February 22, 2017 and again on April 29, 2021.

At the Formal Investigation held November 3, 2021, to develop all facts and circumstances and place Claimant’s responsibility if any, in connection with his alleged inappropriate and disrespectful behavior, Claimant related that if he knew at the time Cobb would be a witness at the Formal Investigation, he would not have felt compelled to talk to her regarding the conversation he had with Grotjahn. In testimony at the Investigation, Claimant refuted the whole of Cobb’s testimony, denying his conversation with Grotjahn encompassed the following:

- That he spoke to her about her mental status concerning schizophrenia or having a bipolar condition;**
- Or her stomach area;**
- Or about sex**
- Or about masturbation.**

As to the subject areas of sex and masturbation, Claimant asserted he would not deem appropriate, respectful, moral or courteous having a conversation about either of these two subjects with Complainant Grotjahn. Claimant opined the conversation he had with Grotjahn was both courteous and consensual; that at no point in their conversation with the hotel staff did he have any indication they were uncomfortable about what was being talked about.

According to Claimant’s other testimony, he stayed at the Candlewood Suites hotel due to working on the Mississippi Bridge for weekend overtime. During his stay at the hotel he did not identify as a CP employee although he acknowledged he was at the time an hourly CP employee and was in La Crosse for Company business. Claimant testified he paid for his stay at the hotel and produced a bank statement showing that he paid the hotel bill thereby proving Carrier had not paid for his stay. However, Claimant acknowledged Carrier had not reimbursed him for his stay due to the fact he had been unable to obtain a receipt of his stay from the hotel and therefore he was not able to submit such receipt to the Carrier which is required for receiving reimbursement. Claimant related that prior to this present stay at the hotel, he had stayed at the hotel about a couple of dozen times. With respect to any relationship he

had with Grotjahn, he characterized they had a friendship he considered as “cool” Claimant averred that when he learned the hotel staff had an issue with his conversation with Grotjahn he was deeply upset and if given the opportunity to apologize he would have but was thwarted to do so when told by Karl Rittmeyer not to contact the hotel.

Upon review of the record evidence in its entirety, the Board finds improbable that Claimant’s account of his conversation with Grotjahn he testified to at the Formal Investigation represents the truth of the matter as there are several contradictions that substantiate the contrary testimony proffered by Cobb. Most significantly is Claimant’s admission that had he known Cobb would be a Carrier witness at a Formal Investigation regarding his conversation with Grotjahn, he would not have been inclined to talk to her and answer any of her questions about the conversation. The fact that he did answer her questions and that those answers were not guarded in light of not knowing there would be any Formal Investigation convened by Carrier related to any rules violations he may have committed and, the fact that he denied giving those same answers when queried at the Investigation and disputing Cobb’s entire testimony proves to the Board that Claimant told the truth in his conversation with Cobb and lied at the Formal Investigation. Another improbability of this entire occurrence is Claimant’s testimony he considered his friendship with Grotjahn as cool having stayed at the hotel many times in the past yet Grotjahn was very specific in her complaint letter to Carrier about this one conversation she had with Claimant as opposed to all other conversations she had on all the other occasions Claimant stayed at the hotel. It is simply improbable that Grotjahn just made up this conversation as Claimant, in talking with Cobb acknowledged the conversation occurred once Cobb reminded him of some parts of the conversation that took place. The Board is persuaded that Claimant certainly would not have admitted to Cobb that Grotjahn’s reference in her letter to his asking her how many times she “flicked her bean” was really asking her how many times she masturbated.

In accepting the detailed complaint filed by Grotjahn as true, the Board concurs with Carrier that Claimant committed the violations he was charged with and that Carrier acted properly by immediately taking Claimant out of service after receiving the complaint letter and verifying by way of an informal inquiry by Cobb that the conversation took place and Claimant’s various comments reported by Grotjahn were in fact deemed to be inappropriate, disrespectful, immoral, and discourteous.

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 28th day of March 2024.