

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45415  
Docket No. MW-47914  
25-3-NRAB-00003-230346**

**The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Keolis Commuter Services**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal in all capacities) imposed upon Mr. J. Curtis, by undated letter (following a ‘Decision Letter’ dated September 16, 2022), for alleged violation of Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 4 – Absent from Duty, Rule 8 – Behavioral Expectations and Prohibited Behaviors, Rule 9 – Safety, Rule 15 – Obeying Instructions, Directions and Orders and Rule 17 – Attending to Duties ‘in connection with his alleged actions on August 21 and 23, 2022 that were hostile, disrespectful, unprofessional and disruptive to a safe, civil and efficient work environment in that while on duty and being paid as a work equipment operator, he sent a text message that contained disrespectful, unprofessional, undignified, profane and offensive statements and language that was addressed to managers, namely J. Connors and B. Brown and yet continued to send text messages to both, was in violation of the Agreement, involved the Carrier’s failure to provide a fair and impartial investigation/deprived Claimant of his rights of due process and was arbitrary and capricious (Carrier’s file BMW 22.198 KLS).**
- (2) As a consequence of the violation referred to Part (1) above, ‘\*\*\*a stay should be issued with Mr. Curtis being returned to service immediately, made whole for all hours lost including all credits and benefits due his absence. \*\*\*’**

**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**

Claimant, Mr. Joseph Curtis, an 18-year employee, worked in the Carrier's Engineering Department, reporting to Mr. Jack Connors, Program Manager of Supplemental Work and Mr. Bob Brown, Roadmaster.

Between August 9 and August 23, 2022, the Claimant sent Mr. Brown, the following series of text messages:

[August 9] CLAIMANT: The t41619 needs an inspection sticker.

[August 15] CLAIMANT: I'm out today.

[August 21] CLAIMANT: Good morning. I'm out tomorrow. Hey buddy why do they call you Bobby bumps? Just asking. Give me ring.

[August 22] CLAIMANT: I'm out tomorrow.

[August 23] CLAIMANT: Bobby bumps. Lol. Kenny bumps. Cut it out. Lmao.

[Undated prior to August 25] CLAIMANT: Call me. Omg. Man up. Tell your little boy to call me.

Mr. Brown found these text messages to be inappropriate and unprofessional. Mr. Brown showed these text messages to Mr. Connors. After seeing the text messages, Mr. Connors directed Mr. Curtis to cease sending text messages.

On August 21, 2022, the Claimant sent the following text messages to Mr. Connors:

**CLAIMANT:** I'm out tomorrow. Chain of command. You or Bobby bumps [sic.] wouldn't know what that means. Just letting you know I'm out Monday.

**MR. CONNORS:** All you need to say is I will be out tomorrow. No need for any additional wise ass comments.

**CLAIMANT:** Punk. Cut it out Jack. Cut it out Jack. I like you. RETIRE. You wanna talk. Anytime. Sorry about the punk comment. Your [sic.] a good guy. Jack. Really. Your [sic.] give it to Bobby bumps. Lol. Call me anytime.

**MR. CONNORS:** Joe. This is Jack Connors. I am giving you a direct order and I hope you understand what I am saying. You are to cease texting or calling me or your Roadmaster Bob Brown again. If you are going to be off please call the Radio Room. Any other issues contact the BMWED. It is obvious that you are having a problem And I am encouraging you to get some help. Please do not disregard this Direct Order as your job with Keolis will be in jeopardy. JACK.

**CLAIMANT:** Such a tool. FO. Call me Jack. Lol. My jobs in jeopardy Lmaoooo. Hey Jack I'm off tomorrow. FO. Call me. Manager of the year. Lol. Excuse me Bobby bumps Lol. Coming Jack. Pull the Trigger. Retire. Lol. Have bumps call me. Omg. You think for 5 seconds I worry bout Keolis. [EMOJI depicting a laughing face with tears] Imaoooo.

Mr. Connors interpreted the letters "FO" to mean "fuck off." Mr. Connors found this message to be inappropriate and insubordinate. He also believed that the Claimant's repeated reference to Mr. Brown as "Bobby bumps" was uncalled for and disrespectful.

On August 25, 2022, the Carrier served the Claimant with a Notice of Investigation regarding the text messages he sent on August 21 and 23. The Carrier

conducted an on-property investigative hearing on September 8, 2022. At the investigative hearing, the Claimant admitted sending the texts to Mr. Connors and Mr. Brown and that he was off work when he sent the messages. He also admitted drinking alcohol at the time he sent the text messages. He also stated he was undergoing treatment for alcohol abuse and that he regretted sending these messages to his supervisors.

On September 16, 2022, the Carrier notified the Claimant by letter that he had been found guilty of having violated Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 4 – Absent from Duty, Rule 8 – Behavioral Expectations and Prohibited Behaviors, Rule 9 – Safety, Rule 15 – Obeying Instructions, Directions and Orders and Rule 17 – Attending to Duties, and that he was being dismissed effective immediately. The Organization appealed the Carrier's decision timely.

#### **Position of Organization**

The Organization contends that the Carrier failed to comply with the procedural requirements of Rule 15 and failed to provide the Claimant with a fair and impartial hearing and inappropriately removed him from service. The Organization also maintains that the Carrier failed to fully account for and consider the mitigating circumstances it put forward at the on-property hearing, which renders the discipline imposed excessive and unjust. The Claimant did not deny that he sent the text messages and admitted that he was seeking treatment for alcohol abuse. Rather than punish him, the Organization believes the Carrier should have gotten the Claimant treatment.

#### **Carrier's Position**

The Carrier maintains, contrary to the Organization's belief, that there were no procedural violations in this case. According to the Carrier, the evidence established that the Claimant went out of his way to be inappropriately confrontational, offensive and insubordinate. The Carrier believes the Claimant displayed a brazen and careless disrespect for his supervisors, his employer and his job. The Carrier also believes the disrespectful profanity and vulgarity contained in his text messages outweighs any mitigating circumstances, making dismissal appropriate on this record.

#### **Analysis**

The Board sits as an appellate review forum in discipline cases. As such, it does not weigh the evidence *de novo*. The Board's function is not to substitute its judgment

for that of the Carrier, nor decide this matter in accord with what the Board believes should have been decided had it been the Board's decision to make. Rather, the Board's inquiry is to determine whether sufficient evidence exists to sustain the discipline imposed by the Carrier. If there is sufficient evidence supporting the Carrier's decision, then the Board cannot disturb the penalty unless the record reflects that the Carrier's decision was unjust, unreasonable or so arbitrary as to constitute an abuse of discretion.

The Carrier charged the Claimant as follows:

[On August 21 and 23, 2022 while on duty and being paid as a work equipment operator] you sent a text message that contained disrespectful, unprofessional, undignified, profane, and offensive statements and language that were addressed to managers, namely Jack Connors and Bob Brown. You acted in a hostile manner. Your disrespectful and unprofessional actions were disruptive to a safe, civil, and efficient work environment.

[You] were specifically told to cease texting and calling Jack Connors and Bob Brown and yet you continued to send text messages to both.

The Carrier charges that the Claimants conduct violated Keolis Code of Conduct: Rule 1 – Knowledge of the Rules, Rule 2 – Courtesy and Professional Conduct, Rule 4 – Absent from Duty, Rule 8 – Behavioral Expectations and Prohibited Behaviors, Rule 9 – Safety, Rule 15 – Obeying Instructions, Directions and Orders and Rule 17 – Attending to Duties.

To fully understand the text messages the Claimant sent, a basic knowledge of text communication is necessary. This new mode of communication began in the early 21<sup>st</sup> century with the appearance of modern smartphones. Smartphone users developed shortcuts to use in place of typing out various phrases. These shortcuts are now common. For example, the shortcut "LOL" is generally accepted to mean "laughing out loud;" "OMG" means "Oh my God," and "LMAO" means "laughing my ass off." The shortcut "F.O." has generally been held to mean "fuck off." When asked at the investigatory hearing, the Claimant said he didn't know what "F.O." meant or why he used it. But Mr. Connors and Mr. Brown interpreted "F.O." to mean "fuck off," which is a highly offensive, profane and vulgar declaration. Public Law Board 5564, Award No. 84 held that a claimant's use of the term "fuck" towards a supervisor was crude, derogatory and threatening. When the Claimant's text messages are reviewed in totality, there is substantial evidence supporting the Carrier's allegations that the

Claimant communicated to his supervisors in the manner charged and that he violated the Carrier's rules.

The Organization properly established at the hearing that, contrary to the charging document, the Claimant was not on duty at the time he sent the communications. But Rule 2 of the Carrier's Code of Conduct, expressly states that each employee is required to conduct himself in a professional or ethical manner "at all times," "both in and away from the workplace." The fact that the Claimant was drinking at the time away from work and off-duty does not excuse his actions.

The Organization believes that the Carrier should have assisted the Claimant and that it failed to do so. There is no evidence in the record that the Carrier knew of the Claimant's problems with alcohol or that he had requested assistance prior to August 21, 2022. There is insufficient evidence that the Carrier should have assisted the Claimant.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 19<sup>th</sup> day of December 2024.