

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on March 22, 2004, when it issued the Claimant, Mr. G. Hughes, a *Letter of Counseling for discourteous behavior* directed at his Roadmaster on February 2, 2004, allegedly violating Maintenance of Way Operating Rule 1.6.
2. As a consequence of the violation referred to in part (1), the Carrier shall make the Claimant whole for all wages lost account of this violation, and remove any mention of this incident from the Claimant's personal record. [Carrier File No. 14-04-0069. Organization File No. 140-1311-043.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Glenn C. Hughes, has been in the Carrier's employ since 1977. At the time of the incident giving rise to the instant case, he was working as a Machine Operator in the Carrier's Maintenance of Way Department in the vicinity of Kingman, Arizona.

On February 10, 2004, he was served a notice of investigation by the Carrier's Southwest Division General Manager, reading,

Attend formal investigation at the BNSF Division Engineer's Conference Room, 101 East Route 66, Flagstaff, Arizona, on Tuesday, February 17, 2004, at 9:30 AM, with your representative and witness(es), if desired, to develop the facts and place responsibility, if any, in connection with your alleged discourteous behavior during morning job briefing on February 2, 2004, while assigned as machine operator on TP-05.

The date and site of the investigation were changed, by agreement of the Parties. It was held in Amarillo, Texas, on February 24, 2004. The Claimant was present with his representative, and the Claimant and three witnesses presented testimony about an incident on February 2, 2004. Their testimony is almost completely in accord, one with another. A transcript of testimony and evidence is in the record before this Board.

During the morning job briefing on February 2, 2004, the Claimant angrily complained of his treatment at a motel in Kingman the previous weekend. Foreman Frank David explained what had happened at the motel:

Mr. Hughes had a concern about the, the motel. I guess they were checking out that morning 'cause it was on a, on a Friday, and, and I guess their belongings got put out because they, the person that they were rooming with checked out and, and stuff like that. And so I guess they got all their belongings mixed up in one bag between the clean clothes and the dirty clothes, and that was the concern that was, that was brought up. That was it. And, you, know, it's just got out of hand from that point. [Answer No. 104]

The Claimant's account of what happened at the motel sheds more light on the cause of his distress:

125. Q. Okay, and talking to you prior to this hearing, my understanding is you had some liquid prescription medicine that apparently when they bagged up, spilled all over your clothing and stuff, and you were upset about that, also?

A. The, the main thing that upset me about the, I, I have glaucoma, and I had small bottles of eye drops that I have to do every day. And the lid wasn't on one of them good and, and I was looking for it and it was in the bottom of the trash bag. And there was only about a quarter of an inch in it when I get the prescription. And it was, it was just a tiny bit left in it. And I went back to the, I went to the drug store the next day to get my prescription refilled, and they told me, "No, you can't do that because your prescription isn't up yet." So, then I had to wait the weekend. Well, actually, I done without my, my eye drops for three days before I got to get it renewed because I couldn't get it renewed 'cause the prescription time wasn't up yet.

The testimony of Assistant Foreman Tony R. Ruiz explains how the Claimant's experience escalated into angry words at the job briefing:

All I know is Mr. Hughes had his personal items removed from the motel that we were staying at Kingman. And he became pretty irate about it 'cause he had, I guess, some pretty valuable stuff in there. And they just bagged it up and put it in the motel up in the storage room. He spoke with, with the motel about it. And then he ended up checking out of that motel. Then that next Monday morning, they started discussing that incident again at the job briefing and he became pretty irate again about it. I listened, standing kind of towards the back, behind Leslie and, and him. So, I wasn't really hearing what was going on. I could tell they were pretty animated about what was going on. [Answer No. 86]

Assistant Roadmaster Leslie L. Strezo was conducting the job briefing in which the incident arose. She was not previously aware of the occurrence at the motel which triggered the Claimant's angry outburst. (The Carrier furnishes lodging at contracted hotels and motels for employees assigned to service which requires them to live away from home.) She testified,

He [Mr. Ruiz] told the guys that he would like them to notify him in advance if they're staying over the weekend so that he could tell the hotels, to hopefully prevent the problem from happening again. Mr. Hughes obviously didn't like that answer. He, he began to raise his voice about the situation, about what had went on over the weekend. He was, he was yelling about it, about what had gone on, about what they had done over the weekend with the guys as far as cleaning out their rooms, the ones that were supposed to staying the weekend, putting their stuff in garbage bags and placing it out in the hotel room. I was trying to take all this in. Like I said, it was the first that I heard of it. It, I was trying to listen to see what was going on. His voice was elevated. He was yelling. His focus was, remained at me. A few times my foreman, Steve Norwood, stepped in and told him that he needed to calm down. It did nothing. He just, he kept yelling out about how they're treated like second class citizens, and how the hotels shouldn't be doing this to them. I do agree with that. I, you know, I can understand why he was mad about it. But, the fact that he was yelling and his focus was directed towards me, I really was trying to just break the tension. [Answer No. 28]

At another point in her testimony, Ms. Strezo indicated that she felt she was the focus of the Claimant's anger:

52. Q. At some point during the conversation you began involved in it?
A. Well, I felt like I was involved in it directly when Mr. Hughes began speaking. Like I said, he was focused on me, speaking, as it seemed to me, towards me.
53. Q. Okay. And Mr. Hughes was talking loudly?

A. Yes.

54. Q. Was that so everyone could hear him or is that the way he normally talks or?

A. No, no, I'd never heard him talk like this. You could tell there was, there was anger in his voice. He, he was upset which, you know, I could understand.

55. Q. Okay.

A. But he was, he was yelling. His focus did remain on me. You know, he kept saying the company; and you know, just like I said, his focus was on me.

56. Q. Okay. Well, and you are a Company official in charge of this gang, correct?

A. Yes, I am.

Ms. Leslie further testified that she felt she had been disrespected by the Claimant, and that the job briefing was not the proper place to raise his issues about the motel.

Ms. Leslie smiled and/or laughed during their exchange of words. She explained what happened:

I really was trying to just break the tension. I think Mr. Hughes took it the wrong way. But, I did, I tried to crack a smile. He took it as I was laughing at what had happened, which I was not, it was not my intention if that's the way that he had taken it. He then proceeded to say that, yeah, it's, it's funny when you're kicked back at Havasu. That's when I felt it was definitely directed towards me. [Answer No. 28]

60. Q. Okay. And apparently at some time during the conversation, he interpreted it that you might be laughing at him or something like that?

A. Yes, that's what I take from his, his comment that he made.

61. Q. Okay. So, and that upset him even more?

A. Yeah.

The Claimant explained his impression of Ms. Strezo's attempt to lighten the tension:

128. Q. And my understanding from prior testimony, also, that you thought she was laughing at you and you became even more upset, and talked louder?
- A. Yeah. Well, it's like she explained, "I wasn't really laughing. You know, I was trying to break the ice or whatever and make." And, you know, and I can understand that now. But, at the time, I thought, you know, she's making fun of me. And that even made things more difficult for me.

All those who testified fully agreed that no threats, foul language, profanity, or vulgarisms were used by the Claimant in his exchanges with Ms. Strezo. Furthermore, he readily became silent when told to do so. Ms. Strezo said that when she told him she had heard enough, he stopped talking. After the Claimant explained that he thought Ms. Strezo was making fun of him, which made him even more angry, he was asked:

130. Q. Mr. Hughes, as frustrated and as angry as that made you, when she asked you to stop, what, what took place then?
- A. When, when she asked me to stop and everything, you know, I just stopped.

When the conducting officer asked the Claimant if he had any questions for Ms. Strezo, he took the opportunity to explain his feelings about their verbal exchange, and to substantiate that her testimony was correct.

I would just like to say that everything that she said is, is right. I mean, she's not adding to nothing or, you know, going out of her way to make me look bad or nothing. I mean, she's telling it like it, like it happened. And my, the only thing that I can say to that is that, you know, I was, I was all upset. And I was, you know, talking louder and louder; and, right away, and it was like the heat of the moment thing. And, you know. But, you know, I didn't. I didn't. I wasn't focusing, like on her. It, as to hurt her, like I was just, I was just, you know, getting louder and louder 'cause I was more upset. And then when, when I interpreted that she thought it was a joke, that made me more upset. But, you know, even when she explained that, you know, she told it like it was. [Answer No. 69] I go along with what Ms. Strezo said. [Answer No. 71]

On March 22, 2004, the General Manager advised the Claimant of the Carrier's decision with regard to the investigation:

This letter will confirm that as a result of formal investigation held on February 24, 2004, concerning your discourteous behavior during morning job

briefing on February 2, 2004, while assigned as machine operator on gang TP-05, you are issued a formal counseling for your violation of Rule 1.6 of the Maintenance of Way Operating Rules, . . .

The Organization promptly appealed this disciplinary decision in a communication from its General Chairman to the Carrier's Labor Relations Officer. It argues that when the Claimant voiced his complaint about the handling given his personal belongings at the Carrier-provided lodging place, he felt he was being laughed at by the Assistant Roadmaster in charge of the gang, which caused him to become more upset. When he was told that the matter with the lodging place would be handled, he said no more. It points to Ms. Strezo's response in Answer No. 28: "There were no more outbursts, and we went on with the briefing."

The Organization further argues that although the Claimant was upset, he did not threaten and he did not use foul language. Being upset, he expressed his concerns in a loud voice, and when he thought he was being laughed at, he became more "boisterous." When told to be quiet, he did exactly that. The issue was not raised again.

The Organization also argues that even formal counseling was "extreme, unwarranted, and unjustified."

The Carrier responds that it developed substantial evidence, including the Claimant's own testimony, that he raised his voice at the Assistant Roadmaster, and acted inappropriately. The discipline assessed is neither harsh nor excessive. The claim was denied.

The Board has carefully studied the transcript in this case, and considered the arguments of the Parties. It is concluded that even the relatively insignificant discipline assessed here is excessive, for the reasons discussed below.

The Claimant was rightfully vexed when his personal effects were carelessly handled by strangers, and particularly so when it became known that his glaucoma medication — something of critical concern to him — had been spilled in the process. His annoyance was exacerbated when he was unable to get the medication refilled immediately because it was not yet time for a refill.

Thus, ill-disposed because of his experiences at both the motel and the pharmacy, the Claimant was primed to insistently register his complaint with the Carrier, as the provider of away-from-home lodging, at the first opportunity. That opportunity was presented at the job briefing on the next Monday morning. While Assistant Roadmaster Strezo felt that the complaint was focused on her — and she had no part in the motel incident, nor even any knowledge of it — she was the ranking Carrier officer on the scene and it's only natural that the Claimant addressed his angry comments at her. While it is clear that he did not hold her personally responsible for

what had happened, in her conciliatory effort to bring order out of chaos with a smile, her intentions were mistakenly taken as laughter at the Claimant's plight, which naturally reinforced his sense that he was being taken lightly. His anger heightened, and his voice followed suit.

Ms. Strezo was rightfully offended by the Claimant's intensifying rage, and when she told him she had heard enough, he stopped complaining. "When she asked me to stop, I just stopped." It's worth noting that despite his anger and his impression that he was being made fun of, the Claimant did not resort to foul language such as profanity or vulgarity.

In the investigation, the Claimant was not evasive about the event, and he concurred in Ms. Strezo's account. At the close of the investigation, he was given the opportunity to make a statement on his own behalf. He said,

Well, sir, I, I feel that, that everybody has been truthful, and everything is, you know, like, like Leslie, she said, she's told it like it was. And, you know, as far as I, I don't want to repeat any of this. And, you know, I, I have no, I have no feelings that I won't be able to get along with, with Mrs., Ms. Strezo.

You know, she's, I don't have anything against her. She's a good person. It's just, it, right at that time things escalated and, and I was upset. And she got upset. And, you know; but, I have no bad feelings or anything. [Transcript page 23]

Looking beyond the actual event at the job briefing, the expressions of the Claimant and Ms. Strezo indicate that there was no personal agenda which triggered the Claimant's outburst. Rather, he was angry at his employer for permitting, or not preventing, what happened at the motel, and as Ms. Strezo was the Carrier's ranking agent, he poured out his frustration toward her. Unfortunately — but understandably — Ms. Strezo perceived that his attack was personally focused on her. She felt disrespected, she said.

Ms. Strezo also suggested that the job briefing was not the proper forum in which to raise the motel issue. That may very well be true, but it is also quite possible that the Claimant did not know that the job briefing was not the place to discuss it. This was addressed during cross examination of Ms. Strezo:

75. Q. You stated that you guys do a job briefing, and you discussed how your job's going to lay out for today. And then after the job briefing, you talk about any issues that come up. Is, is that where this issue arose about the corporate lodging?
- A. Yes. Questions and concerns. We usually try and keep it to, to issues such as, you know, maybe a move, what we're going to be doing, safety issue maybe we didn't talk about in the briefing. We

try not and let it get into other issues such as, you know, hotel lodging, and things of that nature because...

76. Q. Stuff.

A. I mean if we do that, we really end up setting ourselves up for a forum, a forum that, you know, has nothing to do with the job safety briefing at hand. That stuff is normally handled. You know, like I said, employees come in to me and talk to it, and we talk to the foreman about it, and try to put out a plan so that if we do decide to change something, we can discuss it at the briefing in a more, like I said, structured manner than the one that had occurred.

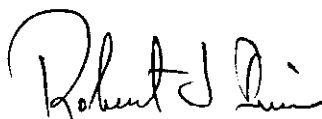
77. Q. But, occasionally other topics do come up in the job briefing?

A. Occasionally.


Without suggesting that outbursts of anger are acceptable ways of resolving problems, the reactions of both the Claimant and Ms. Strezo are natural and understandable. These are merely expressions of emotion. Impersonal anger is not always discourtesy. A voice raised in impersonal anger is not always discourtesy. There were no threats of harm nor foul language. In view of the Claimant's excellent past record, 27 years of service with only one disciplinary entry in 1979, the incident on February 2, 2004, does not warrant any disciplinary entry on his personal record in the instant case. The claim is sustained.

AWARD

The claim is sustained.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



William L. Yeck, Carrier Member



Date