

PUBLIC LAW BOARD NO. 5850

Award No. 376
Case No. 376

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant Richard J. Jacques (7935521) was dismissed by letter dated October 16, 2009, for violation of BNSF Policies on Violence in the Workplace and Workplace harassment that occurred on September 15, 2009.
2. The dismissal of Mr. Jacques, who has been a dedicated employee with over thirty-one (31) years of service, is unjust, excessive, arbitrary, capricious and without merit. The Organization respectfully requests that Mr. Jacques be reinstated to the service of the Carrier, with all seniorities intact, and that he be made whole for any and all wage and compensation loss suffered.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

This incident began as a disagreement between two employees in a traveling gang regarding the window blinds in their overnight accommodations. The disagreement over whether the blinds should be open or closed became an argument. The argument then escalated further. According to the Complainant, the Claimant called him an expletive and punched him in the legs. When the Complainant got up to leave, the Claimant grabbed him by his belt and threw him against the wall.

Claimant did not object to testimony about the shades, but denied punching Complainant in the leg or throwing him against the wall.

Claimant and Complainant shared the room on the night the incident occurred. At the end of the following workday, Complainant requested that his Supervisor change his assigned roommate. His request was fulfilled immediately.

An Investigation was convened to find the cause of the violence in the workplace, identifying Claimant as the originator, and at the conclusion it was Carrier's decision, based upon all the testimony, that Claimant was guilty as charged. The result was termination of Claimant's service from the Carrier.

Claimant admitted he did not abide by the engineering instructions that while employed dictate that they should use professional and courteous behavior while lodging in facilities that the Carrier is paying for. When asked if his conduct was professional and courteous, Claimant's response was "no." He did, however, deny acting violently.

Complainant was responsible for a written account which reads in quoted part as follows:

"Date of incident 9-15-2009. At Chadron at Super 8 at 400 pm. R A Jacques came into the room and open the blinds. Steve said he wanted the blinds closed for he could get some rest. Jacques got mad and said these blinds stay open in this room. Then Jacques called him a **** and started punching him in the leg. Steve stood up and was going to leave. Jacques got in his face and told Steve to punch him first. Steve said no and walked away. Jacques got Steve by the belt loop and shoved him against the wall. Steve left the room."

There is no doubt that Claimant was guilty as charged. The Board agrees fully with the Carrier's findings.

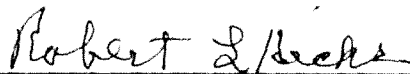
The Carrier strives to avoid situations such as are evident in this case.


AWARD

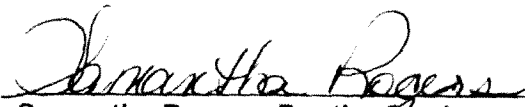
Claim denied.

ORDER

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


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 2/18/11