

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
v.)
BNSF RAILWAY COMPANY)

Carrier File No. 10-12-0623
Organization File No. C-12-D070-18

Claimant — Dennis R. Hiatt

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. Dennis R. Hiatt by letter dated August 17, 2012, for alleged violation of HR 90.2 Workplace Harassment Policy and MOWOR 1.6 Conduct in connection with charges of quarrelsome, discourteous, and confrontational conduct on August 1, 2012 on the Beatrice Subdivision.
2. As a consequence of the violation referred to in Part (1) above, Claimant Dennis R. Hiatt shall now receive the remedy prescribed by the parties in Rule 40(G).

BACKGROUND:

This is the second of two Claims filed on behalf of Mr. Hiatt, both arising out of the events of July 30-August 1, 2012, relating to Claimant's alleged possession of a loaded gun on Carrier premises. The first claim (PLB-07602-000013) challenged Claimant's dismissal for violating MOWOR 1.12, Weapons on July 30, 2012, and the Award in that case sets forth the facts underlying that claim. The present claim stems from Claimant's conduct on August 1, 2012, toward

co-workers who had contacted the BNSF Special Police to report that Mr. Hiatt had showed them a loaded gun that he had been carrying in the company truck he was driving.

An Investigation was held August 9, 2012. On July 30, 2012, Claimant had showed a loaded gun that he had in his Company truck to a co-worker, Cliff Terwey. On July 31, 2012, he had shown the same gun to another co-worker, Michael Haberer. After the second time, Terwey contacted BNSF Police, who sent Senior Patrolman Scott Danley, and the gang's Supervisor, Paul Farley, to Crete, Nebraska, to investigate on August 1, 2012. The two men spoke to Claimant, Terwey and Haberer. After Danley and Farley left, Claimant approached Haberer and, according to Haberer, told him that he was "chicken shit" and that "what goes around comes around." Haberer testified that Claimant was mad, which he felt was normal under the circumstances, but that the conduct was out of the normal for Claimant and he (Haberer) was upset by it. Claimant denied that he had threatened or attempted to threaten Haberer. Later that same day, over the radio, Haberer overheard Claimant being rude to Terwey. Mr. Terwey testified to conversations that he had with Claimant on August 1, 2012, the gist being that Claimant had told Terwey he was "chicken shit" and had spoken to him rudely over the radio. After the radio conversation, Terwey contacted Danley and reported that he believed the work environment was hostile. Claimant and Terwey had worked together before without incident, and the events of August 1, 2012, were the first time Claimant had shown any hostility toward Terwey.

At the end of the Investigation, the Carrier concluded that Claimant had violated MOWOR 1.6, Conduct, which admonishes employees not to be "quarrelsome" or "discourteous." Additionally, BNSF has issued a Workplace Harassment Policy (Policy No. HR-90.2), the objective of which is "to provide a work environment that fosters mutual respect and working relationships free of harassment." The Policy states, in part:

BNSF Railway Company (BNSF) does not tolerate verbal or physical conduct by any employee which harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. All BNSF employees will treat others with dignity and respect. BNSF will take the necessary actions to prevent workplace harassment and will take prompt remedial action should any violation of the policy occur.

According to the Organization, dismissal for what happened is excessive and without merit; all three employees were involved in the heated conversations but the Claimant is the only one who was disciplined. The Carrier responds that Claimant confronted two co-workers in a quarrelsome and threatening manner, in violation of both MOWOR and the Workplace Harassment Policy, and dismissal was appropriate.

FINDINGS AND OPINION:

The Board, upon the whole record and all the evidence, finds that the carrier 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 Public Law Board has jurisdiction over the dispute involved herein.

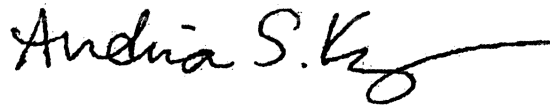
This Board denied the Claim in the prior case in Award No. 13. Because the Claimant's dismissal in that case remains, this Claim has become moot and must be dismissed.

AWARD

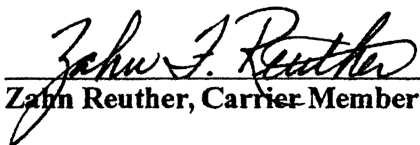
Claim dismissed.

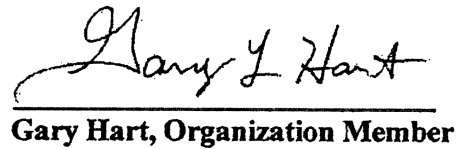
ORDER

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



Andria S. Knapp, Neutral Member



Zahn Reuther, Carrier Member

Gary Hart, Organization Member

February 12, 2014
Date