

PUBLIC LAW BOARD NO. 5814

Case No. 17

Award No. 17

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer Michael J. McLaughlin for removal of discipline (censure) from his personal record and that he be made whole for all time lost.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

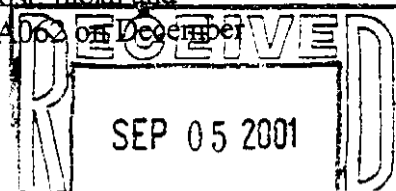
That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On December 13, 1994, Claimant was the Engineer of Train No. 168AA062 operating from Gillette to Guernsey, Wyoming. The other members of the crew were Conductor William Hansen and Brakeperson Clarene Ruth Prentice. Ms. Prentice had hired out on November 20, 1994, and this was only her second trip. A student engineer was also on this assignment.

On December 14, 1994, Train No. 168AA062 operated back to Gillette. The Claimant, Conductor Hansen and Brakeperson Prentice were again the crew of Train No. 168AA062. There was no student engineer present on the return trip, however.

On September 9, 1995, approximately nine months later, Brakeperson Prentice complained to Trainmaster Chambless that the Claimant had made sexist, racial and offensive remarks to her while they were assigned to Train No. 168AA062 on December



13-14, 1994. It should be noted that Ms. Prentice is African-American. At Trainmaster Chambless's request, Ms. Prentice submitted a written complaint against the Claimant.

The Claimant was notified to attend an investigation on September 16, 1995, to ascertain the facts and place responsibility, if any, for his alleged use of inappropriate language and discourteous conduct on December 13-14, 1994, while employed as the Engineer of Train No. 168AA062. Brakeperson Prentice reiterated her allegations against the Claimant at that investigation. The Claimant emphatically denied making an inappropriate remark to Ms. Prentice on either December 13 or 14, 1995, while on Train No. 168AA062. Conductor Hansen testified that he did not hear the Claimant use any inappropriate language or show any discourteous conduct toward Brakeperson Prentice during the trip on either December 13 or December 14, 1995.

On October 4, 1995, the Claimant was advised that a permanent entry of censure was being placed on his personal record because of his purported use of sexist and vulgar language on December 13 and 14, 1995.

Unquestionably, the allegations against the Claimant are serious. Making sexist remarks to a female employee while at work is totally unacceptable as is making racial comments to an African-American employee while at work. If proven, the Claimant's conduct constituted sexual and racial harassment of a fellow employee.

As noted above, the Claimant denied making any sexist or racial comments to Brakeperson Prentice. To this Board, it is significant that Conductor Hansen rode in the lead unit with the Claimant and Brakeperson Prentice on both December 13 and 14, 1994, and never heard the Claimant use any offensive language toward Ms. Prentice. He never saw the Claimant and Ms. Prentice alone at any time on December 13 or 14, 1994. His testimony was credible and convincing, in this Board's opinion.

It is also worth noting that no one corroborated Ms. Prentice's accusations against the Claimant. Moreover, she waited nine months before apprising any Carrier officer of his purported harassment of her. In the light of these circumstances, this Board is compelled to conclude that the Carrier has not proven by substantial evidence that the Claimant used sexist, racial and/or vulgar language toward Brakeperson Prentice on December 13 and 14, 1994.

For all the foregoing reasons, the discipline assessed the Claimant on October 4, 1995, must be expunged from his record and he must be made whole for all time lost as a result of this unwarranted discipline.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective
on or before thirty (30) days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Dated: 8/4/01