

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY

Case No. 441 – Award No. 441 – Claimant: Glisson
Carrier File No. 14-12-0358
Organization File No. 130-13C5-1212

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing July 20, 2012, when Claimant, Montie W. Glisson (6571335), was disciplined with a Level S Combined Suspension with a 1-year review period for his alleged misconduct creating an intimidating, offensive and hostile work environment . . . while working as a Welder on July 18, 2012. The Carrier alleged violation of MOWOR 1.6 Conduct.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline with seniority, vacation, all rights unimpaired and pay for all wage loss commencing July 20, 2012, continuing forward and/or otherwise made whole.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, M.W. Glisson, was hired by the Carrier in 1994. On July 19, 2012, the Carrier charged Claimant to attend an investigation to determine his responsibility, if any, in connection with alleged misconduct creating an intimidating, offensive and hostile work environment on July 18, 2012 while assigned as a welder on RP09. The Carrier asserted that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct. Following the investigation, the Carrier found that Claimant had committed the

misconduct alleged and assessed him a Level S Combined Suspension, 15 days actual suspension and 15 days record suspension, with a one-year review period.

MOWOR 1.6 Conduct provides:

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome
or
7. Discourteous

Any act of hostility, misconduct, willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated.

Claimant was working as a Welding Foreman on June 18, 2012. Alfred P. Campos, Carrier Roadmaster at LaJunta, Colorado, testified at the investigation that on that day he was driving south, towards the area where the RP09 gang was working, when he came upon a truck parked on the track at Milepost 177.9. He stated that Claimant was inside the truck and, as he drove by, appeared to be in a reclining position. Mr. Campos stopped his truck, looked again, and then went to the truck, opened the door and asked Claimant if he was sleeping. Mr. Campos testified that Claimant replied that he was not, and Mr. Campos told Claimant he was in a reclined position.

Mr. Campos added that he noticed that Claimant did not have retro-reflective work wear and asked why he was not wearing his vest. He stated that Claimant replied he did not need the vest because he was sitting in the truck. Mr. Campos asked how the truck got onto the track, and Claimant replied that his helper had put it there. Mr. Campos testified that he asked Claimant to come to his truck to talk about the matter.

Mr. Campos stated that they went to his truck and he took out his Rulebook and asked Claimant if he knew the rule about sleeping. Claimant replied that he did not know what the "f . . . ing rule said." Mr. Campos testified that he probably referenced sleeping, or the rule concerning sleeping, two or three times. Mr. Campos added that he asked Claimant if he knew the rule about retro-reflective work wear and Claimant gave the same response. At that point, Mr. Campos testified, he decided he needed another Carrier Officer present, so he asked Claimant to get into his truck, as he intended to look for the Assistant Roadmaster.

Claimant, Mr. Campos testified, replied that he was not getting into the "f . . . ing truck." Mr. Campos asked Claimant why he was refusing to do as he asked and Claimant

did not respond. At that point, employee Rod Hornbuckle came up to them. Hornbuckle and Claimant moved a few feet away, and Claimant asked Mr. Hornbuckle to move the truck because he had to "go with this f . . . ing idiot." Mr. Campos stated that he told Claimant he could not call him by that name, and asked Mr. Hornbuckle if he heard what Claimant had just said, but Mr. Hornbuckle replied that he had not heard anything and walked to the truck. Claimant got into Mr. Campos' truck and they drove to Springfield, Missouri. Mr. Campos discussed the matter with the Assistant Roadmaster and they called a drug/alcohol testing collector and then sent Claimant home for the day.

Mr. Campos testified that Claimant was aware he was a Roadmaster on the territory, as he had attended several job briefings with the gang. Mr. Campos added that during the encounter Claimant was loud and quarrelsome, but Mr. Campos did not raise his voice. Mr. Campos prepared a written account on the day of the incident, which was entered into the investigation record. It was consistent with his hearing testimony.

Claimant prepared a written account of events, which he signed and dated at the hearing and read into the record. In it, he recounted that on the morning at issue he stopped at approximately Milepost 177.5 to let his grinder, Mr. Hornbuckle, out of the truck to assist workers who were knocking off anchors. He proceeded to Milepost 178, set his brakes, and called the Assistant Foreman to let him know there was a machine proceeding in his direction. He saw the machine coming over the hill, and focused on the location of the men and the machine. Claimant stated at the hearing that it was his job to keep an eye on the employees and equipment along the track and keep everyone safe. In his written statement, he explained that the sun was in his left eye, because the truck was facing east, so he tilted his head to the right so the truck's cab would block the sun.

The statement continued that a white truck pulled up to Claimant's, while he was still watching the machine come closer to the working men, and someone pulled open his truck door. He noticed that it was Mr. Campos, who accused him of sleeping. Claimant maintained that he said he was not sleeping, he was watching the machine come over the hill so no one would be injured. Claimant stated that Mr. Campos told him twice more that he had been sleeping, becoming aggressive and discourteous. He added that Mr. Campos began to walk away, so he closed his truck door, believing that the encounter was over. However, Mr. Campos came back, opened his door again and asked why he was not wearing his vest. Claimant maintained that he replied that they had gone to the store, apparently to get one, but by the time they got to the crossing to set on the track the day's track warrant was being repeated, so they copied it and Mr. Hornbuckle set the truck on the rail west of the gang, and Claimant never got out of the truck. Claimant added that he was waiting for the gang to back up and get started so the rest of them could pull forward and begin working.

The statement continued that Mr. Campos again accused Claimant of sleeping, and Claimant denied it again, feeling frustrated and harassed. Claimant stated that Mr. Campos told him to get into his truck, and Claimant replied that he had work to do and started back to his own truck. At that point, Claimant added, Mr. Campos asked if Claimant was not going to do what Mr. Campos told him to do, so Claimant asked a

young man to move his truck so he could go with Mr. Campos. Mr. Campos then took Claimant to the depot, where he was set up for drug/alcohol testing. Claimant stated that he did not know why the incident had gone so far, as he explained several times that he was not sleeping and felt that Mr. Campos was simply looking for someone to harass that day.

At the hearing, Claimant denied raising his voice or using profanity. He stated that Mr. Campos kept insisting he had been sleeping, and he became frustrated as he continued to deny it. He maintained that Mr. Campos accused him of sleeping eight times. He denied calling Mr. Campos an idiot.

Claimant's personal record shows no previous discipline.

The Carrier states that this case is not complicated, as Roadmaster Campos testified that he went to the truck where Claimant was sleeping to ask him what he was doing, and Claimant became confrontational and swore at Roadmaster Campos, using obscene language. While Claimant denied Roadmaster Campos' version of events, the Carrier notes that it is the responsibility of the Hearing Officer to resolve such credibility conflicts. Therefore, the decision to credit Roadmaster Campos and find Claimant committed the violations alleged should not be disturbed by this Board. Roadmaster Campos' testimony, the Carrier concludes, is sufficient to meet its burden of proving the charges by substantial evidence. The Carrier states that the penalty was consistent with its Policy for Employee Performance Accountability (PEPA) and Claimant's personal record. The Carrier urges that the claim be denied.

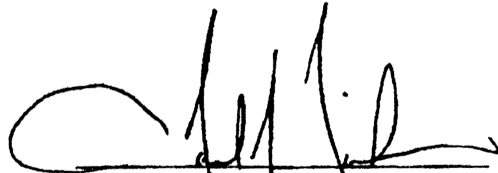
The Organization asserts that the Carrier has provided no evidence or testimony showing that Claimant failed to follow MOWOR 1.6. The Organization stresses that there were no eyewitnesses to the encounter and no evidence that Claimant failed to follow any instructions at the date, time and location stated in the Investigation Notice. The Organization concludes that the discipline assessed is unwarranted and extreme, and unsupported by the facts of the case. The Organization urges that the claim be sustained.

We have carefully reviewed the record in its entirety. The resolution of this matter depends upon the credibility determinations of the Hearing Officer. It is well settled that such determinations are the responsibility of the Hearing Officer, not this Board, and should not be disturbed absent a showing that they are unreasonable or unsupported by the record. There is no such showing here. Roadmaster Campos' testimony establishes that Claimant did indeed act in a hostile, intimidating, profane manner towards his supervisor, in the presence of another employee. While Claimant attempted to portray Mr. Campos as the aggressor, Claimant's own testimony establishes that he was not wearing required protective clothing and that he, at least initially, refused to follow Mr. Campos' instruction that he come to his truck and did so only after Mr. Campos accused him of refusing to follow his instructions. Mr. Campos' testimony is sufficient for the Carrier to meet its burden of proving Claimant's guilt by substantial evidence.

The discipline assessed by the Carrier was a heavy penalty for an employee with no previous disciplinary record. However, given the conduct established by this record, we cannot say that the discipline, including a 15-day actual suspension, represents an unfair, arbitrary or discriminatory exercise of the Carrier's discretion to determine penalties.

AWARD

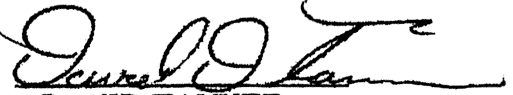
Claim denied.



DAN NIELSEN
Neutral Member



JOY MENEBEZ
Carrier Member



DAVID TANNER
Organization Member

Dated this 20th day of Feb, 2014.