

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 498 – Award No. 498 – Mack
Carrier File No. 14-18-0426
Organization File No. 2417-SL13D2-184

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following Claim on behalf of Southwest Division District 600 Gregory Mack (6597694) Seniority Date March 24, 1995 for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service. 3) overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing July 10, 2018, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

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, Gregory Mack, has been employed by the Carrier since 1995. On May 31, 2018, the Carrier notified Claimant to attend an investigation to ascertain the facts and determine his responsibility, if any, in connection with his alleged dishonesty in connection with his transfer request. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of Maintenance of Way Operating Rule (MWOR) 1.6 Conduct, and assessed him a Standard Formal Reprimand with a one-year review period. Claimant's personal record shows no previous discipline.

The incident which led to the instant discipline took place in March 2018. Claimant bid on a Track Inspector position on District 400 in Gillette, Wyoming. On March 27, 2018, Claimant requested to cancel his bid. Although Carrier officials agree that he was not required to provide a reason for withdrawing his request, Claimant stated that it was due to the illness of his then-girlfriend, Angela Westercamp.

Division Engineer Sheri Ellis testified at the investigation that in about May 2018, Ms. Westercamp contacted her and Jesse Bower, Claimant's immediate supervisor, who was not available to testify at the investigation. Ms. Ellis explained that Ms. Westercamp complained Claimant had been dishonest in his reasons for withdrawing his bid and that he misrepresented the status of her treatment. Ms. Ellis stated that Ms. Westercamp was rude and accused her of not handling the matter properly.

Ms. Ellis stated that she had spoken with Claimant on multiple occasions, and he had never been dishonest with her. In order to avoid Ms. Westercamp's repeated complaints, Ms. Ellis stated, she told her to file a complaint with the Carrier's Hotline for reporting employee misconduct, at which point she was put in contact with Human Resources Director Hermelinda Guardiola.

Ms. Guardiola testified at the investigation that during phone interviews with Ms. Westercamp and Claimant, she learned that Claimant's reason for canceling his transfer contradicted the information Ms. Westercamp provided her. She concluded that Ms. Westercamp's illness had not gotten worse and did not influence Claimant's decision to withdraw his transfer request. She confirmed that he was not required to give a reason for withdrawing his bid, but having him provide a dishonest one was potential grounds for discipline.

Ms. Guardiola never spoke to Ms. Westercamp in person. She stated that she did not consider any personal issues between Ms. Westercamp and Claimant that might have motivated her complaints, although she was aware they had been involved in a relationship, deeming such matters irrelevant.

Ms. Guardiola acknowledged that she spoke to Claimant only once, when he was on the job and unable to discuss the matter with her in any detail. She stated that she asked him to call her back and telephone records show that he did call her, and she did not return that call.

Claimant explained at the investigation that he and Ms. Westercamp had ended their relationship by the time she made the complaints against him, and that she made false accusations because she was angry. He also presented numerous written statements by friends and co-workers attesting to his honesty and good character.

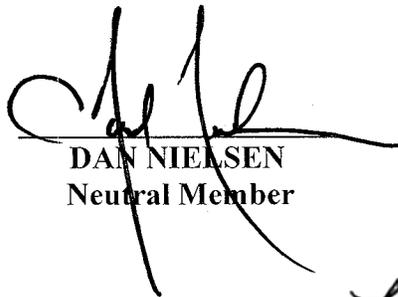
The Carrier found Claimant guilty of dishonesty, in violation of MWOR 1.6 Conduct, by giving a false reason for withdrawing a transfer bid, even though he was not required to give a reason at all. It has the burden of proving, by substantial evidence, that such is the case. It has failed to meet that burden.

Claimant is a long-term employee. Ms. Ellis testified that she knew Claimant fairly well and did not believe he was dishonest. The nature of Ms. Westercamp's repeated complaints indeed indicates that they were likely motivated by a personal desire to cause trouble for Claimant, but Ms. Westercamp never considered whether that was the case. She accepted Ms. Westercamp's telephone account without even providing Claimant a reasonable opportunity to counter her accusations. This is not the sort of evidence required to find an employee guilty of a serious offense.

With respect to the remedy, the claim, as the Carrier states, is overbroad. We therefore sustain the claim to the extent that it requests all notations of the discipline assessed against Claimant be removed from his personal record.

AWARD

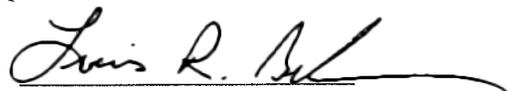
Claim sustained in accordance with Findings.



DAN NIELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.