

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 515 – Award No. 515 – R. Ling

BNSF File No. 14-19-0128

Organization File No. 2417-SL1313-191

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Roy Ling (1468255) Seniority Date 04-12- 2000 for the removal of the Claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).

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, R. Ling, has been employed by the Carrier since 2001. On March 13, 2019, following an investigation, the Carrier found Claimant guilty of failure to comply with instructions provided by Roadmaster Mike Espey, in violation of Maintenance of Way Operating Rule (MOWOR) 1.13 Reporting and Complying with Instructions, when he failed to respond to a service interruption call from the Maintenance Desk on December 27, 2018 at approximately 4:40 p.m. while working as a Track Supervisor on the Seligman Subdivision. The Carrier assessed him a Standard Formal Reprimand with a one-year review period.

Roadmaster Espey was Claimant's supervisor at the time of the incident. He explained at the investigation that he had taken over as Kingman Roadmaster on September 1, 2018 and had set expectations for the three Track Supervisors under his supervision that they would handle service calls on their workdays, particularly on their own territories. If an employee was unable to take the call, one of the other Track Supervisors would cover it.

The instant matter arose on December 27, 2018, when the Maintenance Desk called Claimant about a call ticket and he failed to answer the calls. Mr. Espey explained that Claimant works Sundays through Thursdays and told Mr. Espey he turns his phone off as soon as he gets off work on Thursday and does not turn it back on until late Saturday or early Sunday. The result of this, Mr. Espey stated, is that the other two supervisors have to take calls that come in during this period, which puts them past 12-hour shifts and requires them to cover situations that are not on the territories they usually run or inspect. It causes the other two supervisors to work the extra hours that, Mr. Espey maintained, Claimant should cover.

Claimant testified at the investigation that he was aware of these expectations, as Mr. Espey had communicated them to him. He stated that he worked eight hours on December 27, 2018, which was "his Friday," the last day of his work week, and once he is off work, he is off work. The other two track supervisors were available, so the Maintenance Desk should have called them first, rather than calling him. He stated that he does not work regular hours but after completing his workday he did not need to be, and was not required to be, on call and was not obligated to take calls, although he maintained he tries to make himself available. He stated there are procedures in place for calling employees in, by seniority.

The record shows that Claimant was well aware that Mr. Espey expected him to take service calls on his territory on days he was working, even if he had already worked an eight-hour shift. Mr. Espey had, in September 2018, issued Claimant a Coaching and Counseling letter to this effect. The record is also clear that Claimant did not believe he should be required to do this, and even told Mr. Espey he turned off his phone at the end of his last workday of the week, until the weekend was over, to avoid such calls.

Mr. Espey issued Claimant a coach and counsel letter on September 11, 2018, stating that Claimant had, on multiple occasions, failed to comply with instructions to take calls during flash floods and other unexpected situations. The letter added that Claimant would be expected to comply with his supervisor's instructions and be available as required on his territory, and that a failure to do so could result in progressive discipline. Mr. Espey stated that Claimant refused to sign the letter, telling Mr. Espey he was not required to take calls after his assigned hours.

Our review of the record shows that while the Organization attempts to characterize Mr. Espey's directions as "expectations" Claimant was not required to follow, this is an exercise in semantics. It is clear, however he phrased them, that Mr. Espey indeed gave Claimant instructions. He had already informed Claimant he was subject to discipline if he did not follow them, which should have made it absolutely clear that these were instructions.

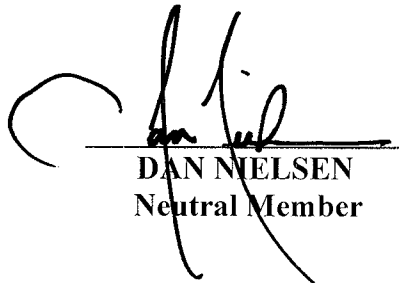
As it applies to Appendix 23 of the Agreement, this Board takes no position on whether Mr. Espey's directive that Claimant make himself available at all times when off duty was valid. That is not the point. It is universally understood that, with certain narrow exceptions, the proper answer to an invalid order is to obey it, file a grievance, and let the grievance machinery take its course. An employee who engages in self-help by ignoring an order he disagrees with is guilty of misconduct. Here, the record indicates that, on December 27, 2018, a day Claimant had worked, the Carrier's Maintenance Desk called him four times to respond to a trouble ticket on his

territory. Claimant did not answer. Given his testimony about what he believed his obligations should be, it is apparent that this was not an accidental occurrence. He was making himself unavailable because he disagreed with the order to be available. The Carrier has met its burden of proving Claimant's guilt by substantial evidence.

The penalty was assessed in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA), and we see no reason to disturb it.

AWARD

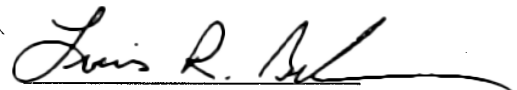
Claim denied.



DAN NELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.