

**PUBLIC LAW BOARD NO. 5850**

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**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY COMPANY**

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Case No. 541 – Award No. 541 – D. Arredondo  
Carrier File No. 14-19-0400  
Organization File No. 2419-SL13C5-1943

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of David Arredondo (0369538), Seniority Date of May 06, 2015, 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 reimbursed for attending this investigation 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, D. Arredondo, has been employed by the Carrier since 2015. On November 11, 2019, following an investigation, the Carrier found Claimant guilty of inappropriate conduct toward a fellow employee when he behaved in a quarrelsome manner after a verbal exchange on August 26, 2019. The Carrier determined that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct and assessed him a Standard Formal Reprimand with a one-year Review Period.

At all times relevant, Claimant was working as a Welder on the Stockton Subdivision. It is undisputed that on August 26, 2019, Claimant and fellow employee Jeremy Hovsepien engaged in a disagreement over who should drive the boom truck. At the investigation, Structures Supervisor Anthony Alvarez testified that while he had not been present for most confrontations

between Claimant and Mr. Hovsepien, there had been a little bit of conflict between them about trivial things at work, such as who is going to drive the truck or other day-to-day work activities about which they disagreed.

Mr. Alvarez further testified that Claimant and Mr. Hovsepien had come to talk to him at different times about the same disagreement. He did not document any conversation related to the incident, but entered into evidence the Hotline Call Worksheet from when Mr. Hovsepien called the 800 number, which details Claimant's and Mr. Hovsepien's interviews related to the incident, and a summary from Human Resources (HR) employee George Hill. The Hotline Call worksheet, completed by Carrier Police Special Agent Steven Phillips, provides, in pertinent part:

On 08/29/2019 at 1022 hours I was contacted by the ROCC [BNSF Police] regarding the report of workplace violence. . . . The victim was listed as Jeremy Hovsepien and the aggressor was [Claimant]. The report also listed Michael Beltran as a witness. It was alleged that [Claimant] told Jeremy Hovsepien, "If it was like it was in the past, I would have already knocked your F\*\*\*\*Ng A\*\* out", during an argument. Upon receiving the report, I contacted Jeremy Hovsepien by phone. . . . Hovsepien stated that this incident started on Monday morning. They started work at the Fresno Structures shop off of Freeway 99 and Clinton Ave. They drove the crew cab pickup to the Calwa Yard to pick up the boom truck. Hovsepien stated he did not want to drive the boom truck and [Claimant] lost his keys. Hovsepien gave his keys to [Claimant] and they sat there for a minute. Michael Beltran was also in the truck. Nobody wanted to drive the boom truck so they left. Beltran made a comment that they are all going to get in trouble for not taking the boom truck or doing their job. Hovsepien stated that it goes off seniority and the lowest guy drives the boom truck. [Claimant] started cussing and stated it has nothing to do with seniority. Hovsepien said, let's go back and I will drive the truck. Hovsepien stated, he made the comment that you are so entitled to everything (referring to [Claimant]). [Claimant] then responded by saying, you are white; you're the one that feels entitled. Hovsepien then told Beltran, did you hear that, he is making racist comments. Hovsepien then got in the boom truck and left. Hovsepien said it was weighing on his mind so he talked to his supervisor, Tony Alvarez who said he was going to handle everything. The day went about as normal with no further conflict. At the end of the day, they were talked to their foreman, Brian Rush who stated they needed to get along.

On Tuesday they started the day at the shop, drove the truck to Calwa, and had a conference call with Brian Rush. Rush told them they need to get along and they have great jobs. Rush continued by saying the railroad provides classes like approaching others and provides tools to help deal with this. Hovsepien said [Claimant] made a snide comment like, "I am in for it, but I don't know about Jeremy". When the conference call ended, [Claimant] said I don't like you and you don't like me, we just need to figure this out. Hovsepien responded by saying, why are you putting words in my mouth and they started going back and forth. Hovsepien asked [Claimant], what is it that upsets you about me? [Claimant] said, I don't know, it is all the time you upset me. [Claimant] then stated, "If it was like

it was in the past I would have already knocked your fucking ass out.” After that, Hovsepian said he just let it go. Later he told Brian Rush and Tony Alvarez what occurred. Tony said he would meet with [Claimant] and Hovsepian on Thursday to deal with it, but Hovsepian stated he took Thursday off because he did not want to deal with it. I asked about the cussing on Monday and Hovsepian stated that [Claimant] was saying fucking this and fucking that. Hovsepian stated, you are cussing at me and [Claimant] replied, if I was cussing at you I would call you a fucking pussy. Hovsepian stated, Michael Beltran witnessed this.

I next contacted Michael Beltran by phone. He stated there was a confrontation regarding the boom truck. He said [Claimant] did not have his keys to the boom truck and asked Hovsepian if he would drive. Hovsepian said no and they left as if they were not going to drive the boom truck. Beltran told them, we have to take the truck. They came back to get the truck and they got into an argument. Hovsepian said I am not driving, I have seniority. I asked about someone referring to entitlement and Beltran said [Claimant] mumbled something about, isn't that a white thing? I asked about cussing and Beltran stated they were both cussing, but not at each other; more like I am tired of fucking stuff. He stated this is common and they argue about every other month. I asked Beltran if he heard someone say, if I was going to cuss at someone I would call you a fucking pussy. Beltran said that was [Claimant] towards Hovsepian.

Beltran stated that [Claimant] also said, “if this was the old railroad we wouldn't be arguing like this we would handle it like back in the old days we would fight and this would be over”. Beltran said it was not a threat like I am going to fuck you up; It did not look like they were going to come to blows. After that they were silent. I asked if this was common and he said he has worked with them for four years. Beltran stated that Hovsepian has seniority and Hovsepian gives them a hard time. Hovsepian states he does not have to drive because he is senior. Hovsepian's personality is stubborn and he does not listen to anyone; Hovsepian and [Claimant] just never had clicked. Beltran stated he has talked to Hovsepian about being stubborn and he will not listen. Beltran also stated, Brian Rush talked to them on the conference call about how they need to get along.

I next talked to Brian Rush who said he talked to Hovsepian about taking the input from the others in the past. Rush said that [Claimant] had come to him this week and said he had words with Hovsepian. [Claimant] told Rush, he told Hovsepian if this was the old days they would have handled it. Rush stated he talked to [Claimant] and said BNSF has great tools and use other words to get along. I asked about the boom truck. Rush told [Claimant] he has to drive the boom truck because he has less seniority. Rush said he had talked to Hovsepian two weeks ago about working better together and taking input from others. Rush said Hovsepian tried to make it sound like the confrontation is not his fault. Rush said Hovsepian also told him he was thinking about reporting this because he thought that [Claimant] was going to accuse him of being a racist. Hovsepian did not like that [Claimant] said if this was the old days we would take it outside. Rush said he did not think it was

a threat but improper language because they walked away from each other. Rush had a conference call with them about getting along.

I next contacted [Claimant] and asked him about an incident between him and Hovsepien. He stated they had a disagreement. [Claimant] said that he feels Hovsepien uses his seniority to not do anything; Hovsepien does not ever drive. [Claimant] said he told Hovsepien seniority only counts for overtime and bumping. [Claimant] said it got inflated and Hovsepien did not like what he said. [Claimant] said Hovsepien thought he was cussing at him but [Claimant] said he was not cussing at Hovsepien. [Claimant] said he spoke to Hovsepien and said he used the "F" word but did not direct it toward him. [Claimant] said he said something like, we just need to fucking work. He stated Hovsepien uses seniority as an excuse not to work. [Claimant] continued by saying that Hovsepien uses seniority so he never has to drive. [Claimant] said he felt that was unfair and we are supposed to be a team. [Claimant] stated on Tuesday, they had a conference call with the foreman (Brian Rush). After they hung up [Claimant] said we need to figure something out to work with each other, we need to work together. Hovsepien asked for an example of what he does wrong and [Claimant] gave him the example of the project in Hanford and told Hovsepien he does not want to listen to anyone. [Claimant] said Hovsepien was not going to change so [Claimant] walked away.

I asked if he said anything about in the old days and he asked what I meant. I asked if he said something similar to, if in the olden days I would knock your fucking ass out. He said he did not say that. He said that Hovsepien wants to get him fired. I asked him again if he said anything similar to that and he said no. He stated it was Tuesday after the conference call when they argued. I asked him several times if he said anything similar to if this was the old days I would knock you out and he said "No." [Claimant] said he did not think this was that serious and is surprised Hovsepien reacted this way. It is just two guys that don't get along. He said if he is being reprimanded for cussing then so be it, but he did not threaten anyone. I asked if Hovsepien cussed too and he said no. Hovsepien must have took the cussing as a threat. [Claimant] said he feels this is a waste of time. He denied ever talking about things in the old days. [Claimant] also stated that the supervisor told them to get along. [Claimant] said he would take whatever steps he needs to take to get along. [Claimant] said we just need to work together and we need to stop bickering. I asked if he can work with him and he said, I didn't think we are having a problem. If he had issues in the future, he would go to his supervisor.

Neither Mr. Phillips, Mr. Beltran, nor Mr. Rush testified at the hearing. Mr. Hill's summary, emailed to Mr. Alvarez on October 23, 2019, states:

9/3/19 - BNSF Police Officer Steven Phillips investigated and substantiated but referred to HR since it is a non-criminal matter. HR Amy Li spoke with Office Steven Phillips, reviewed report details, and determined both employees cussed and were involved in a verbal altercation. A comment was made by Mr. Arredondo to

Mr. Hovsepien that could have been perceived as a threat. Recommended action is formal investigation for 1.6 Conduct for both employees.

Mr. Hill also did not testify at the hearing. When asked whether Mr. Hovsepien violated MOWOR 1.6, Mr. Alvarez stated, "yes and no. . . [I]f I had to take somebody to investigation every time they cussed at someone, I'd spend my whole life in an investigation. Technically by the rule, yes." He stated that Claimant similarly violated MOWOR 1.6.

Mr. Alvarez further testified that in the four to five years that Mr. Hovsepien and Claimant had worked for him, there had never before been an incident. He described it as a disagreement and explained that he has witnessed and used profanity on the railroad before, but that whether it is quarrelsome depends on context. He further explained, "There's a difference between cussing to somebody and cussing at somebody. If you're cussing at somebody, I would call that quarrelsome. If you're cussing to somebody, that's just a statement." Mr. Alvarez further testified that there was no foreman onsite, and had there been a foreman, the disagreement would not have occurred.

Lastly, Mr. Alvarez testified that he spoke with Mr. Hovsepien and Claimant about figuring out a way to get along. He explained that he had hoped they could work it out before it came to an investigation and thought of his conversations with them as coach and counseling discussions. However, he stated, because Mr. Hovsepien called the 800 number, it is "no longer a coach and counsel" and "the priority gets bumped up."

At the investigation, Mr. Hovsepien testified that he called the BNSF Police Hotline to report his disagreement about seniority and who was going to drive the truck with Claimant. He explained that swearing was involved but no actual threats were made, describing the incident as "a disagreement that escalated quickly." He did testify that, at the time of the incident, he perceived a threat, and that he and Claimant were being quarrelsome "[t]o an extent." He explained that their gang has not had a working foreman to delegate these issues for about three years, which is why everything was blown out of proportion.

Mr. Hovsepien also testified that the Hotline Call Worksheet gave an accurate statement of his report on August 29, 2019, including that Claimant was swearing "at the situation or at [him]" and the Claimant responded to Mr. Hovsepien's entitlement comment by pointing out that Mr. Hovsepien is white. He stated that, since August 26, he and Claimant have continued working together without issue.

At the investigation, Claimant testified that he and Mr. Hovsepien were both unhappy with the situation on August 26, as neither of them wanted to drive, and they had a disagreement. He admitted that he was swearing during the discussion, but not at Mr. Hovsepien. He denied threatening Mr. Hovsepien. He further testified that the gang had not had a foreman for several years and thus no one to delegate tasks like driving the truck. If they had a foreman, he explained, this disagreement would not have happened. Since August 26, he and Mr. Hovsepien have continued working together without issue.

Claimant had no prior discipline on his record at the time of the investigation.

As an initial matter, the Carrier alleges that the Claimant's appeal is procedurally deficient as it failed to identify the governing agreement or any rule that was violated. The Carrier explains that if no violation of any rule or agreement is cited, then no such violation could have occurred.

The Carrier argues that it met its burden of providing substantial evidence of Claimant's guilt. Indeed, Claimant admitted to swearing during the confrontation with Mr. Hovsepian. The Carrier also noted that whether a supervisor was present is irrelevant; Claimant still acted inappropriately. The Carrier requests that the claim be denied.

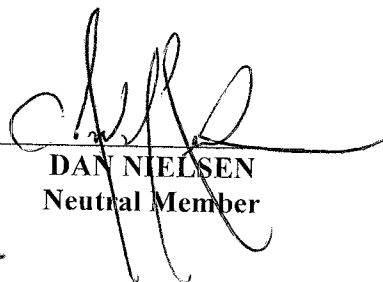
The Organization contends that the Carrier created the hostile work environment by failing to maintain a foreman in charge at that location. As a result, Claimant and Mr. Hovsepian were forced to decide which of them would drive the hoist truck. Additionally, the Organization points out that Supervisor Alvarez coached and counseled both Claimant and Mr. Hovsepian and believed the situation was handled prior to the investigation. No further discipline should have been assessed, and the reprimand should be removed from Claimant's record.

We do not find Carrier's procedural argument compelling and thus proceed to the merits of the case. We have carefully reviewed the record in its entirety and find that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. Though the Carrier cites Claimant's admission that he swore during his disagreement with Mr. Hovsepian, the Carrier's own witness, Mr. Alvarez, explained that "[i]f you're cussing at somebody . . . that [is] quarrelsome. If you're cussing to somebody, that's just a statement." It is unclear from the evidence and testimony in the record whether Claimant was "cussing to" Mr. Hovsepian or "cussing at" Mr. Hovsepian. The evidence is insufficient to show that this was anything more than a simple disagreement among coworkers.

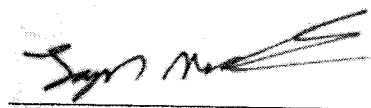
As previously noted, the Carrier bears the burden of proving Claimant's guilt by substantial evidence. The discipline assessed here is unwarranted based on the lack of substantial evidence of any rule violation. For that reason, we must sustain the claim.

**AWARD**

Claim sustained. The Carrier is to comply with this Award within 30 days.



DAN NIELSEN  
Neutral Member



LOGAN MCKENNA  
Carrier Member



JEFFERY L. FRY  
Organization Member

03/24/2025

Dated this 24 day of March , 2025.