

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 66

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level 1 Formal Reprimand for Central Region, G. W. Marquart and J. B. Martin from service was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 2:00 p.m. February 17, 1998 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimants violated the rules enumerated in their decision, and even if the Claimants violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimants violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On February 11, 1998, both Claimants were advised of an investigation being scheduled for February 17, 1998:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rules S-28.6, S-28.6.1 and S-26.4 of Safety Rules and General Responsibilities for All Employees, effective March 1, 1997, as supplemented or amended, concerning a report alleging that you made inappropriate, insulting, sexist and threatening remarks toward co-worker Sue Haney on or about the period from August 15 through December 18, 1997, while working for Regional Surfacing Gang SC02."

The Carrier did, following the investigation, assess each a formal reprimand which is

retained in each Claimant's work record.

The burden of proof in disciplinary matters rests solely upon the shoulders of the Carrier. They must, by the furnishing of substantial evidence, establish Claimants' culpability for the charges assessed.

The complaining employee not only presented a written seven page account of what is alleged to have occurred during the gangs duration, but also appeared at the investigation. The Board finds, however, that everything the Complainant alleges to have happened was relayed to her by others. She, herself, was never directly addressed in the terms she accuses the Claimants of using. The only threatening language alleged to have been said by the Foreman (one of the Claimants) was attested to by a crew member who did admit to having a very serious relationship with the Complainant at the time. Again, it was not said to her.

The Board finds that the Carrier has failed to substantiate either Claimant was culpable for the charges assessed. All traces of the written reprimand are to be removed from each Claimant's record. The letter assessing the discipline is reduced to a warning, to remain in each Claimant's file as a reminder of the necessity of abiding by the Rules, particularly Rules S-26.4 and S-28.6.1, and especially so when the work force may be of mixed gender. The letter, however, is not to be used or referred to in any disciplinary hearing, should there be need.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

Robert L. Hicks

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli

Rick B. Wehrli, Labor Member

Thomas M. Rohling

Thomas M. Rohling, Carrier Member

Dated:

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