

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 178, (Case No. 178)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION – IBT RAIL CONFERENCE**

**VS**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Joy E. Mendez, Carrier Member  
David R. Scoville, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing April 14, 2014, when Claimant, Dan L. Elmore (1328236), was disciplined with a Formal Reprimand with a 1 – year review period for his alleged inappropriate and discourteous comments made to Blake Allison, Management Trainee, while working as a Safety Assistant on the Southwest West Division on March 12, 2014. The Carrier alleged violation of Maintenance of Way Operating Rule (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 and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss including overtime commencing April 14, 2014, continuing forward and/or otherwise made whole.”  
(Carrier File No. 14-14-0189) (Organization File No. 170-SF13C5-143)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within all the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate that on March 12, 2014, the Claimant was alleged to have made an inappropriate comment to Management Trainee Blake Allison and because of that allegation the Claimant was directed to attend a formal Investigation on April 4, 2014, which was mutually postponed until April 14, 2014, concerning in pertinent part the following charge:

**"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged inappropriate and discourteous comments made to Blake Allison, Management Trainee, while working as a Safety Assistant on the Southwest West Division on March 12, 2014. The date BNSF received first knowledge of this alleged violation is March 21, 2014.**

**This investigation will determine possible violation of MWOR 1.6 Conduct."**

On May 12, 2014, Claimant was notified that he had been found guilty as charged and was assessed a Formal Reprimand with a One Year Review Period.

It is the position of the Organization that the Investigation was held in an untimely manner in violation of Rule 13. Additionally, it argued that during the Hearing it was discovered that the alleged incident might have happened on March 13 or 14, 2014, and not March 12, 2014, as alleged in the Investigation Notice, therefore, the Notice of Investigation was invalid and should have been canceled. Based upon the aforementioned allegations the Organization argued that the Claimant was denied a "fair and impartial" Hearing and because of that the discipline should be removed without reviewing the merits.

Turning to the merits the Organization reviewed in its appeal letter of June 13, 2014, the reactions of Witness B. Allison regarding the alleged incident in the first paragraph recopied below after which it summarized the testimony of Gregory S. Kreie as well as his voluntary statement as follows:

**"As to the events that allegedly took place. The Carrier Witness states that he was offended by being called a "college boy". He was not offended enough to bring it to the Principal's attention at the time, but after speaking with the witness's Supervisor, he decided he was offended.**

**There was a witness statement presented in the Hearing by another person that states no such incident happened at any time (pages 18-19-20-2) (Exhibit #5). Also on the day in question a Senior Company Official was present from start of shift that morning until approximately 1:00 P.M., during the time the event allegedly occurred and he did not take any exception to anything, or comment as to what was taking place.**

**The Principal was not aware of any derogatory or degrading comments that might have been directed toward the witness, Mr. Allison...."**

The Organization concluded that the Carrier did not show that the Claimant was guilty and it requested that the discipline be rescinded and the claim be sustained as presented.

It is the Carrier's position that there were no procedural problems during the handling of the Claimant's case and the Investigation was held in a timely manner because its first knowledge of the alleged incident was on March 21, 2014, thus, its Investigation Notice was mailed within seven days of first knowledge and the Hearing was scheduled within 15 days as required by the Agreement. It requested that the case be resolved on the merits of the dispute.

Turning to the record the Carrier argued that Management Trainee Blake Allison testified the Claimant referred to him as "college boy" and he was offended by the remarks and Division Engineer Sheri Ellis corroborated Mr. Allison's testimony in her testimony and the fact that Mr. Allison informed her that he felt belittled and offended. It further argued that after having proven its allegations, it appropriately disciplined the Claimant in a corrective manner. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and will first address the Organization's procedural arguments. The Organization argued that the Investigation was not scheduled in a timely manner because the Carrier had first knowledge of the alleged incident on March 12, 2014, when Management Trainee Allison was offended by Claimant's alleged comments. The argument is inventive, but not persuasive because Mr. Allison was a Trainee and did not hold an authoritative Officer position, therefore, it was not until March 21<sup>st</sup> that a Carrier Officer with vested authority to formulate charges became aware of the alleged incident. Thus, it is determined that the Notice of Investigation was sent in a timely manner and the Hearing was scheduled in accordance with Rule 13. The argument as to the date of the alleged incident being inaccurate and being grounds for setting aside the discipline are found to be lacking. The Board is not persuaded that the Claimant was denied his "due process" Agreement rights and it is determined the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

The transcript indicates that Mr. Allison repeatedly testified that the Claimant referred to him as "college boy" and that he was offended by the comments whereas the Claimant testified that he did not remember calling Mr. Allison "college boy". An argument could be made that the Claimant's testimony was not as definitive as Mr. Allison's testimony and might be perceived as being self-serving. However, that presumption would ask one to determine that the Claimant's testimony was less credible than Mr. Allison despite the fact that the Claimant had shown himself to be responsible employee with a good work record and approximately 16 years of unblemished service. The Board is not persuaded that Allison's testimony outweighs the Claimant's testimony when it is considered in conjunction with the written statement from Gregory S. Kreie who

was in involved in the Training Session attended by the Claimant and Management Trainee Allison and who stated in pertinent part:

"...It is, therefore, my testimony that at no time during the three days of training did I hear, or hear discussion of, any comments made by Mr. Elmore, or any one of the other attendees, that could have been considered disrespectful, discourteous, or degrading to Mr. Blake Allison, either as to his person, his education, or his position as an Officer of the BNSF Railway. Nor, did I ever observe Mr. Allison being treated any differently during the training sessions by Mr. Elmore or any of the other attendees because of his position at BNSF as an Officer of the Carrier."

Additionally, Gregory S. Kreie wrote that Mr. S. Rubio, Assistant Director Engineering Safety, was an observer of the Training Session on March 12<sup>th</sup> and that Mr. Rubio told him the atmosphere of the training session was very positive. Mr. Kreie's testimony that the Claimant did not treat Mr. Allison discourteously was not refuted. It is determined that the Carrier did not meet its burden of proof, therefore, the Board finds and holds that the discipline is set aside and the Claim is sustained in accordance with Part 2 of the Claim.

**AWARD**

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman & Neutral Member



Joy E. Mendez, Carrier Member



David R. Scoville, Employee Member

Award Date:

