

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 7048

BNSF RAILWAY

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 26
Carrier File No. 13-08-0011
Organization File No. J-08-01D
Claimant: Mark A. Hayes

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing November 9, 2007 when Claimant, M.A. Hayes (7354525) was issued a Level S thirty (30) day Record Suspension. The Carrier alleged violation of Maintenance of Way Operating Rule 1.6-Conduct, 1.9-Respect of Railroad Company and BNSF Engineering Inspection 21.2-Showing Proper Conduct. The incident concerned two incidents to a Best Western Inn employee at Carthage, Texas on August 27 and 28, 2007; and
2. As a consequence of the violation referred to in part 1 the Carrier shall remove this incident from the employee record and pay all wages loss commencing November 9, 2007, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant, Mark A. Hayes was issued a Level-S 30-Day Record Suspension following allegations that he had violated Maintenance of Way Operating Rule 1.6 – Conduct, 1.9 – Respect of Railroad Company and BNSF Engineering Inspection 21.2 – Showing Proper Conduct. The discipline was imposed following reports by a desk clerk at the Best Western Inn in Carthage, Texas on August 27 and 28, 2007, that the Claimant had berated her by telephone when he discovered that a room had not been reserved for his use. The evidentiary record reveals that the Claimant called for a room and was advised that none had been set aside, whereupon he apparently invoked his status as a supervisor to intimidate the desk clerk into re-locating another employee to provide a room for the Claimant. According to the testimony at the investigative hearing, the desk clerk was sufficiently distressed that she locked down the lobby before the Claimant could arrive. The Organization disputes that the Claimant behaved inappropriately, and thus contends that the 30-day Level-S Record Suspension should not have been imposed.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was submitted to Public Law Board 7048 for adjudication.

FINDINGS AND DECISION

Public Law Board No. 7048 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

The Claimant's description of his conduct at the investigative hearing was unable to overcome the credible evidence upon which the Carrier relied to impose a 30-day Level-S Record Suspension as discipline. There was no evidence of any prior relationship between the Claimant and the hotel clerk at the Best Western Inn in Carthage, Texas that would have motivated her to dissemble. Nor is there any other factor that would undermine the Carrier's investigation of the instant matter.

The most compelling evidence that the Claimant exceeded reasonable parameters of business interaction, and thus brought BNSF into disrepute in violation of the Maintenance of Way Operating Rules is that the desk clerk felt so uncomfortable that she locked down the lobby and advised BNSF of the Claimant's conduct. Notwithstanding the Claimant's self-serving testimony, it is clear from the evidentiary record that the Claimant acted in an obnoxious and bullying manner and that

he behaved inappropriately when he invoked his status in an angry, unprofessional manner attempting to rectify a mistake in booking accommodations for which he was personally responsible. His overbearing and pompous conduct strongly suggests that the Claimant has an anger-management problem.

Having delegated the task of securing hotel reservations to an Assistant Track Supervisor, rather than fulfilling this aspect of his duties himself, the Claimant overreacted to the situation and conducted himself in a quarrelsome and discourteous manner. As an employee clearly identified as a BNSF supervisor, his misconduct justified the imposition of substantial discipline.

When viewed in conjunction with the incident in which the Claimant berated a cashier at the Schultz BarBQ Restaurant, it is clear that the Claimant needs to modify the manner in which he interacts with the public and with co-workers if he is to preserve his employment. The Claimant is hereby admonished that his outbursts of pique and his manner of speaking with others in the course of his duties is not only unacceptable to the Carrier, but also inappropriate in any business setting, and will not be tolerated by the Carrier or withstand scrutiny by this Board.

Based on the evidence submitted, the Carrier did not violate the Agreement commencing November 9, 2007, when Claimant Mark A. Hayes was issued a Level-S 30-Day Record Suspension. The instant claim is hereby denied.

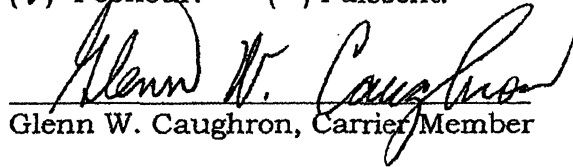
We so find.



Daniel F. Brent, Impartial Chair

Dated: 12/31/2009

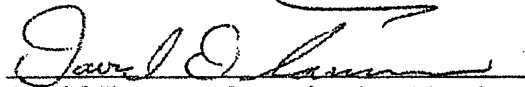
(☒) I concur. () I dissent.



Glenn W. Caughron, Carrier Member

Dated: 4/16/2010

(☒) I concur. () I dissent.



David Tanner, Organization Member

Dated: 4/12/10