

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 338, (Case No. 338)**

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

**vs**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Louis R. Below, Employee Member

**STATEMENT OF CLAIM:**

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

- 1. The Carrier violated the Agreement commencing April 21, 2020, when Claimant Anthony Alvarez (1672385) was not initially allowed to displace a junior employee after being removed from his exempt position and subsequently assessed a Level S Actual Suspension of 21 days from service April 21, 2020 through May 11, 2020, with a One Year Review Period following an Investigation for misconduct while working as an Exempt Structures Supervisor/Bridge Inspector.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing April 21, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-20-0176) (Organization File No. 2419-SL13C5-2024)**

**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 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 17, 2020, Claimant was an exempt employee, working as a Structures Supervisor/Bridge Inspector wherein it was alleged Claimant was instructed to maintain confidentiality regarding investigation into Claimant’s conduct while in attendance at

the Barret-Jackson classic-car auction in Scottsdale in January 2020. Because of Claimant's alleged misconduct Claimant was removed from his exempt position and told to exercise his seniority back to the Structures craft at which time Claimant was directed to attend a formal Investigation on April 30, 2020, concerning in pertinent part the following:

**"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged misconduct during a company investigation into your attendance at the Barret-Jackson classic-car auction in Scottsdale in January 2020. Specifically, during an interview with company officers on March 17, 2020, you were instructed to maintain confidentiality regarding the ongoing investigation, yet allegedly failed to do so, potentially compromising the investigation. The date BNSF received first knowledge of this alleged violation is April 21, 2020.**

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

On May 11, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Level S Actual Suspension of 21 days from April 21, 2020 through May 11, 2020, with a One Year Review Period.

It is the Organization's position the Carrier was at liberty to discipline Claimant as an exempt employee which it did when it removed the Claimant from his position as a Structure Supervisor/Bridge Inspector without removing Claimant from service. It argued no proof was offered that Claimant had discussions with anyone regarding Carrier's investigation into whether or not an outside contractor Barret-Jackson expected benefits and/or favoritism from the Carrier because it had provided hotel accommodations and tickets to a classic-car show to the Claimant and some of his co-workers. It argued that Claimant understood after the March 17, 2020, meeting with his Superior not to discuss the matter and did not discuss such. Instead, Claimant only sent a money order to the contractor for the hotel room and car show because Claimant didn't want anyone to think he would favor that company or be obligated to it. It requested the discipline be set aside and the claim be sustained as presented.

It is the position of the Carrier that the Organization's appeal is procedurally defective because the Organization failed to identify the governing Agreement nor did it cite an alleged Rule violation, therefore, the claim should be denied without reviewing the merits.

Turning to the record the Carrier asserted that the transcript and exhibits show that Compliance Manager Wendell Parker met with Claimant on March 17, 2020, at which time Mr. Parker instructed Claimant not to discuss an ongoing investigation regarding outside contractor Bridgewater with anyone, as it was confidential. However, on March 20, 2020, Claimant

disregarded Mr. Parker's instruction and hand delivered money orders to Bridgewater, in direct violation of MWOR 1.6 – Conduct. It concluded Claimant failed to maintain confidentiality and was guilty as charged and it appropriately disciplined Claimant and it asked 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 Carrier's procedural argument. The Board is not persuaded by that argument and it is determined that the case will be resolved on its merits.

Review of the record reveals that Carrier Compliance Manager Parker met with Claimant on March 17, 2020, and instructed Claimant not to discuss an on-going investigation involving an outside contractor Bridgewater about possible favoritism. Claimant admitted on Pages 19 and 20 of the Transcript that on March 22<sup>nd</sup> he hand delivered money orders to Bridgewater as reimbursement for Claimant's hotel room and ticket for the car show/auction in violation of Parker's instructions. It is clear that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately ten years of unblemished service while holding a variety of different positions. Claimant's lapse in judgement cost Claimant an exempt position and the Board finds in this instance, that the additional 21 Actual Day Suspension was excessive and is reduced to a Formal Reprimand with a One Year Review Period. Claimant is to be made whole for the Suspension Period of April 21, 2020 through May 11, 2020.

**AWARD**

Claim partially 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.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 2, 2021