

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 344, (Case No. 344)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES 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 May 6, 2020, when Claimant Daniel Eugene Schnarr Jr. (0071290) was dismissed for misconduct and dishonesty in regard to a Workplace Violence incident that was reported on March 3, 2020, at the St. Louis Yard in violation of MWOR 1.6.**
- 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 May 6, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-20-0168) (Organization File No. 0745-SL13C5-2017)**

**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.

On March 3, 2020, Claimant was assigned as a Welder A/B Combo on Position #97200 on TRWX2116 St. Louis Welding Gang, headquartered in St. Louis, Missouri. At approximately 11:20 a.m., Mr. J. Wontor, Claimant’s Supervisor was hy-railing when he received a text message from Claimant advising him that Claimant felt like he was being harassed by Foreman Rorie. Mr. Wontor replied to Claimant’s text message and instructed Claimant to ignore Mr. Rorie and he

would call him as soon as he could get to a location with cell service. Shortly after that, Mr. Wontor received another text message from Claimant stating he was unable to ignore Mr. Rorie because Mr. Rorie was walking into Claimant's space. Claimant then told Mr. Wontor he was afraid that Mr. Rorie might do something and he felt as though he was being bullied. Claimant then sent another message to Mr. Wontor stating that Mr. Rorie would not leave him alone and that Claimant had notified the Resource Operations Center (ROC) and the St. Louis Police were on the way to handle the situation.

Mr. Wontor then called Special Agent B. Stanley who informed Mr. Wontor he was on the way to speak with both employees and would let him know his findings. Special Agent Stanley informed Mr. Wontor that an investigation was being opened to find out whether or not there was workplace violence, and that the case was being handed over to Human Resources. That Department subsequently believed Claimant was less than accurate about what had transpired and because of that Claimant was directed to attend a formal Investigation on April 8, 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 and dishonesty in regard to a Workplace Violence incident that was reported on March 3, 2020, when working as a welder at St. Louis Yard. The date BNSF received first knowledge of this alleged violation is March 30, 2020.**

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

On May 6, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the Organization's position that the Carrier did not provide the Claimant with a "fair and impartial" Investigation because the Carrier did not properly notify the Claimant to attend the formal Investigation. It asserted the Claimant had his mail held at the local post office, but no notices were delivered. It next argued that the Investigation was held outside of the required time limits of Rule 13 which states that Investigations will not be held no later than 15 days from the date of occurrence. It stated that three Engineering Officers with the authority to file a Notice of Investigation were aware of the March 3, 2020, incident on that same date, therefore, it reasoned that the Investigation should have been held no later than March 18, 2020, and the holding of the Hearing on April 8, 2020, was untimely. It further argued that it was improper to allow telephonic testimony because Claimant was not able to confront his accuser or know whether or not the witness might be being coached. Additionally, it argued that it wasn't proper for the Hearing Officer to enter exhibits in behalf of a Carrier witness and not allow the Claimant

to enter an Exhibit, an audio clip, proving a history of workplace verbal harassment. It asked the discipline be rescinded without reviewing the merits.

Turning to the merits, the Organization stated Claimant was not dishonest while reporting a workplace harassment incident on March 3<sup>rd</sup> to his Supervisor. It stated that Carrier Police Officer B. Stanley went to the location of the incident on March 3 and interviewed the involved participants. Stanley reported that no physical violence had taken place; however, Officer Stanley reported Claimant felt intimidated by Section Foreman Rorie as Claimant perceived an act or threat of violence existed. It argued that Claimant had an obligation to report the incident. Additionally, it argued that the Claimant retained an audio of verbal workplace harassment which would have proven that this was not an isolated incident that gave Claimant good reason to feel intimidated and should have been allowed to be entered into the record. It concluded that the Carrier did not meet its burden of proof and it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that there were no procedural errors in the handling of Claimant's Investigation. It argued that the Notice of Investigation was delivered to Claimant's address on file, and sent via certified mail in compliance with Rule 13. It also noted that it was apparent the Claimant was aware of the Investigation as he appeared at the Hearing. It next argued the Investigation was called in a timely manner on April 1, 2020, two days after the Human Resources Department review of the March 3 incident was concluded on March 30 and forwarded to a Carrier Officer with the authority to issue a Notice of Investigation. Lastly, it argued that a review of the Transcript shows that the Hearing Officer conducted the Hearing in a fair and equitable manner and allowed the Claimant and the Organization to conduct an unhindered defense. It requested that the claim be resolved on its merits.

Addressing the record, the Carrier asserted that the evidence shows that Claimant was dishonest about the March 3, 2020, incident wherein he stated that he had been threatened and/or intimidated by Section Foreman Rorie. It stated Claimant had asserted that Mr. Rorie was in his face and Claimant continued to back away from his aggressor which was disproven by a video that showed Claimant did not back up from Mr. Rorie substantiating that Claimant was dishonest about reporting alleged workplace violence. It further argued credible evidence proved that Claimant was dishonest when he lied multiple times about having to walk backwards. The evidence was not refuted and the Claimant even admitted shortly after the video was played that he "might not have backed up" which was an admission of guilt. It closed that after showing that Claimant was guilty as charged it disciplined Claimant appropriately as dishonesty is a Stand Alone Dismissible Offense. It asked that the discipline not be disturbed and the claim remain denied.

This is a companion case to Award No. 336 and is the second of two discipline cases involving the same Claimant.

The Board has reviewed the transcript and record of evidence and will first address the Organization's procedural arguments. The Notice of Investigation was sent via certified mail to the Claimant's last known address on file and it was apparent the Claimant knew of the Investigation as he appeared at the Hearing. Next, the Hearing was held in a timely manner as the Investigation was called on April 1<sup>st</sup> two days after HR reported its findings to a Carrier Officer with authority to file a Notice of Investigation. Contrary to the Organization's argument telephonic testimony is not new to the industry and has been allowed many times on this property involving the same parties provided the Organization is given full opportunity to solicit testimony from a witness and fully cross-examine witnesses (See for example Award No. 102 of this Board). The Organization was allowed that opportunity. The Organization also suggested that the Hearing Officer improperly entered Exhibits into the record. The Board is not persuaded, in this instance, that the Hearing Officer was in error when he entered Exhibits in behalf of the telephonic witness at they were pertinent to that witnesses' testimony. Lastly, it argued the Hearing Officer erred when he did not allow pertinent information, an audio tape, be entered into the record. It argued that tape would have verified Claimant had been verbally harassed in the past and would have shown that Claimant had good reason to have felt threatened on March 3, 2020. On Page 116 of the Transcript, Hearing Officer D. Edwards stated the following:

**"...All right. We are back from recess at 1427. Um prior to recess we discussed a recording Mr. Schnarr had. Um for the record, I have listened to the recording and I have determined that it is not relevant to what we are currently investigating here today on that happened on March 3<sup>rd</sup>, 2020."**

The Hearing Officer determined that the tape did not specifically pertain to March 3 and would not allow it to be entered into evidence. After that rejection the Organization challenged that decision on Page 117 of the Transcript, wherein it stated the tape should be introduced because it showed there were extenuating circumstances that showed the Claimant had good reason to be concerned about Mr. Rorie's behavior. The Organization also pointed out that the Claimant had provided Ms. Bechtold, Human Relations Officer, a copy of the tape. On Page 69 of the Transcript, Ms. Bechtold read from the Claimant's statement the following:

**"As we discussed on the phone I am attaching the voice recording of Howard Rorie yelling and cussing at myself and other employees..."**

The Hearing Officer was correct that the tape did not directly pertain to the March 3<sup>rd</sup> incident. However, the Board believes that the Organization was equally correct that the

Claimant might have had reason to be concerned about Foreman Rorie's potential behavior and Claimant's tape may have resolved that question. Even though the tape was not allowed, Claimant's unrefuted statement to HR is on the record. That statement confirmed prior to the subject incident, Foreman Rorie had yelled and cussed at Claimant, therefore, it is determined that the information Claimant wanted introduced at the Hearing is part of the record and will be considered.

As this Board has stated before the Carrier has an obligation to provide all of its employees a safe work environment and Workplace Violence cannot be tolerated. It is equally important that employees do not instigate false actions of alleged threatening behavior or workplace violence against innocent employees. The Carrier has asserted that the Claimant's statements regarding Mr. Rorie are not credible as it was clear Claimant was not threatened because Claimant stated multiple times during the Hearing that he backed away from Mr. Rorie, but when the video was shown the Carrier asserted it proved Claimant was dishonest as there was no showing of Claimant backing away.

During the Hearing, Ms. Bechtold testified regarding the video that was shown during the Hearing. Ms. Bechtold's offered a verbal characterization of the video showing Claimant and Mr. Rorie's conversation. She stated that at one point Claimant stepped back from Mr. Rorie, but then stepped forward. The Board is not persuaded that Claimant was in a steady retreat, however, that does not mean the Claimant wasn't concerned about his safety

Aaron Cory, Section Gang Foreman, was Claimant's co-worker on the date of the incident. Mr. Cory was interviewed by Ms. Bechtold, HR Officer, on March 9<sup>th</sup>. It is apparent after reviewing Mr. Cory's interview statement that Mr. Cory, was a reluctant witness, that did not want to be involved with this matter. However, he was questioned in pertinent part as follows:

**"In your initial statement, you stated that Mr. Howard and Mr. Schnarr started to argue. What were they arguing about?"**

**I don't know specifics of what said, know they were disagreeing on the switch that we were at....**

**\* \* \* \* \***

**During Mr. Schnarr and Mr. Rorie's conversation, did either of them ever raise their voices? If so, who?**

**They were both high pitched.**

**During Mr. Schnarr and Mr. Rorie's conversation, did you see either of them waving arms around?**

**Don't remember.**

**Did you see either of them exhibit any aggressive body language, or move closer to the other?**

**No, they were in each other's faces a little, but I didn't see any movement like they were going to fight.**

\* \* \* \* \*

**Did Mr. Schnarr ever indicate to you that he had felt threatened by Mr. Rorie?**

**I'll say that when I got in the truck he was hyperventilating and shaking. I believe he said he was on the phone with BNSF police." (Underlining Board's emphasis)**

Mr. Cory had nothing to gain from not telling the truth, therefore, that statement has substantial credence. Mr. Cory's statement confirms there was an argument between Claimant and Mr. Rorie on March 3, 2020, and the unrefuted audio tape confirms Mr. Rorie had exhibited harsh language towards Claimant in the past. It's also apparent that the argument was loud in nature and coarse language probably arose during the March 3<sup>rd</sup> meeting. Additionally, Mr. Cory's statement confirms that at the conclusion of the conversation Claimant was shaken by the event. However, being upset or hyperventilating does not automatically mean that a person felt threatened as that same reaction can occur to a person who is angry.

As stated before, the record shows that Claimant and Mr. Rorie had previously experienced unpleasant interactions and on March 3, 2020, Claimant was less than polite towards Section Foreman Rorie and argued with Mr. Rorie about his work assignment. Claimant told Mr. Rorie that Rorie was not the Claimant's immediate, Superior, which Rorie acknowledged, but Claimant seemingly forgot that Mr. Rorie was the Carrier Officer who earlier that morning, at the job briefing, gave the Claimant his work assignment. Mr. Rorie approached the Claimant later that morning to advise the Claimant he was not working at the proper location. Mr. Rorie did not criticize the Claimant for doing work at the wrong location, instead he asked Claimant to go to the correct location and do the work he had originally been assigned. It appears there was a miscommunication between the gentlemen as to where the Carrier wanted the Claimant to work that morning. On Pages 106 and 107 of the Transcript, the Claimant was questioned about the video that was made from a camera that was focused on the switch Claimant was working on and where the encounter between the Claimant and Mr. Rorie transpired. That questioning was as follows:

**"Darin Edwards: That's that's fine. Now as you watch the video and I watched the video from I'm watching it from a different perspective, you're watching it from the outside, kind of reliving the thing, um but if you put yourself in someone else's position, would you agree that you left the situation, right? You left the immediate area of Mr. Rorie a handful of times and then came back and in allowed each of you to get in each other's personal space? Did you see that on the video?"**

**Daniel Schnarr: I did. And I can see that perspective, absolutely.**

**Darin Edwards: So, the question therein rises, if you felt threatened, why did you keep putting yourself into that personal space? Because I believe for the first three and a half minutes, Mr. Rorie did not even move his feet.**

**Daniel Schnarr: It's very difficult for a military veteran person to leave an argument. Being questioned again and having to return to argue a whole different thing. It's very difficult just to drop everything and leave. Extremely difficult. I don't I don't know a lot of people that can do that. So, for every time that you see me in the video, I do return and I can see that perspective...."**

The Claimant did not deny he moved towards Mr. Rorie so as to pursue the argument more aggressively but, attempted to excuse his behavior on the basis that it would be very difficult for a military veteran to walk away from any argument. That excuse is not persuasive as the military teaches people to follow the directives/instructions of a Superior and is insulting to veterans as it suggests they do not have self-control. The Claimant and Foreman Rorie did not have a good working relationship, but that's not an excuse for Claimant's behavior. Claimant should have followed Mr. Rorie's instructions in accordance with the principle, **"obey now grieve later"**. Despite the Organization's excellent defense of Claimant, Claimant was the Carrier's best witness against Claimant. Claimant's testimony confirmed that Claimant exhibited aggressive behavior, therefore, it is unreasonable to believe that Claimant felt threatened by Rorie. Substantial evidence was adduced at the Investigation 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 nine years of service with two standard violations under an Active Review Period. Claimant's offense was a Stand Alone Dismissible Offense and the Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to the Carrier's Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

**AWARD**

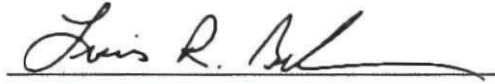
Claim denied.

A handwritten signature in blue ink, reading "William R. Miller", written over a horizontal line.

William R. Miller, Chairman & Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in blue ink, reading "Louis R. Below", written over a horizontal line.

Louis R. Below, Employee Member

Award Date: July 2, 2021