

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 385, (Case No. 385)**

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

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Jeffery L. Fry, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing September 17, 2021, when Claimant Joel S. Glover (1666296) was assessed a Level S 30 Day Record Suspension for being quarrelsome and discourteous on multiple occasions beginning May 2021 and continuing while working on the Carlsbad Subdivision 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 September 17, 2021, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-21-0310) (Organization File No. 2412-SL13C5-2135)**

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 Claimant was assigned as a Machine Operator in May of 2021. It was alleged that between May and June of 2021, Claimant was discourteous and quarrelsome towards his immediate Supervisor and other Superiors and because of that Claimant was directed to attend a formal Investigation on July 30, 2021 (Corrected Notice) concerning in pertinent part the following:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged quarrelsome and discourteous behavior on multiple occasions beginning May 2021 and continuing while working on the Carlsbad Subdivision. The date BNSF received first knowledge of the alleged violation is July 16, 2021.

On September 17, 2021, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a One Year Review Period.

It is the Organization’s position that Claimant was denied a “fair and impartial” Investigation because the Hearing Officer acted in an unprofessional manner during his handling of the Investigation. It further asserted, the Investigation was held in an untimely manner as the Carrier had knowledge of the alleged offense on July 16, 2021, and the Investigation was not held until July 30th. Therefore, it requested the discipline be set aside without reviewing the merits.

Turning to the merits the Organization asserted Claimant was never insubordinate or discourteous to his superiors. It stated Claimant advised his immediate Supervisor and other Carrier Officers, via email on June 29, 2021, about safety concerns he had regarding a work incident that arose on June 28th. Subsequently, on July 2nd Claimant sent another email to the same Carrier Officers regarding his prior email and because of that second email Roadmaster Andujo arranged a conference call between the Claimant and all of the Officers listed on both of Claimant’s emails. The Organization argued that contrary to what the Carrier stated Claimant never refused to get on a call with senior officials, but merely asked whether his Union Representative could listen in on the call. It stated Claimant never refused to participate in the conference call if the Carrier did not allow Claimant’s Representative to listen in on the call. It reasoned Claimant wasn’t insubordinate and the Carrier had not met its burden of proof. It requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier the Investigation was held in a fair manner and the Hearing Officer acted in an appropriate and the Investigation was held in a timely manner. It asserted there were no procedural errors and it asked that the claim be resolved on its merits.

Turning to the record, the Carrier stated the incidents involved with Claimant’s behavior began in May of 2021, but became more intense in the last half of June. It argued that on June 28th, Claimant made an observation that led him to send an email, copying his direct supervision and several others up the chain of command and a few days later, after Claimant didn’t receive a response to his initial email, Claimant sent out another follow-up, a sarcastic email, to the same correspondents for their lack of response. It argued that after the second email Claimant’s immediate Supervisor Andujo and his supervision decided it was worth hosting a conference call

with Claimant and several other Carrier Officers so they could talk through what Claimant was frustrated about. The call was scheduled for July 12th and the Carrier further argued that approximately 15 minutes before the call was set to take place, Claimant and Mr. Andujo met in person and that was when Claimant informed Mr. Andujo that unless Claimant could have union representation on the conference call, Claimant didn't plan to participate in the call and because of Claimant's late request for union representation the call was cancelled.

The Carrier further stated approximately a week later on July 22nd, Claimant, Mr. Andujo and the remainder of the work crew were conducting their morning safety briefing wherein members of the work crew as well as Mr. Andujo talked through topics of safety issues, etc. During that morning briefing, Claimant told a story regarding an active shooter that he had seen nearby the premises. Throughout the telling of the active shooter story, by accounts of Mr. Andujo, Claimant was looking directly at Andujo, almost in an attempt to intimidate and threaten Mr. Andujo which according to the Carrier was part of the continuing discourteous and quarrelsome behavior shown by Claimant over several weeks. It concluded that after proving Claimant was guilty as charged it appropriately disciplined Claimant and it asked that the discipline not be disturbed and the claim remain denied.

The Board has reviewed the transcript and record of evidence and will first address the Organization's procedural arguments. The Board is not persuaded that the Organization was hampered in its defense of the Claimant. The case will be resolved on its merits.

The record reveals Claimant sent an email to multiple Carrier Officers on June 29th regarding Claimant's safety concerns regarding a work incident on the previous day. Three days later on July 2, 2021, Claimant sent another email to same Officers that stated:

"I appreciate the timely response to my safety concerns here at BNSF --- the level of devotion to safety that each of you show is impeccable!" (Underlining Board's emphasis)

On page 41 of the Transcript, Claimant was questioned about the aforementioned email as follows:

"James Orr: Okay. Did you mean that, that it was impeccable, or were you being sarcastic with

Joel Glover: No, I mean it's impeccable.

James Orr: Do you really believe that BNSF response to safety is impeccable?

Joel Glover: I don't actually." (Underlining Board's emphasis)

Claimant first stated Carrier's concern for safety was impeccable and in the next breath he stated the opposite. The underlined portion of Claimant's July 2nd email was purposely sarcastic as Claimant's testimony confirmed he did not believe that the Carrier Officers cared about

employee safety. Before Claimant sent his email Claimant should have taken into consideration that only three days had passed since his first email was sent and perhaps not all of the Carrier Officers had the opportunity to review the email. Contrary to Claimant's assertion that Carrier didn't care about safety the record shows that Carrier did set up a conference call to listen to Claimant's safety concerns. Regarding that call, the record further shows that Claimant waited until 15 minutes before the scheduled conference call to advise his immediate Superior that he would not participate unless his Union Representative was allowed to be involved. Common courtesy would suggest that Claimant could have made his request to the Carrier at an earlier time as Claimant had knowledge of the call five days earlier (See page 4 of Transcript).

During the Hearing, Claimant exhibited a contentious attitude as Claimant started out his testimony on page 39 of the Transcript by calling the Hearing a "kangaroo court". Claimant further stated in his closing comments the process was not fair (despite the fact that the process is the result of a negotiated Rule).

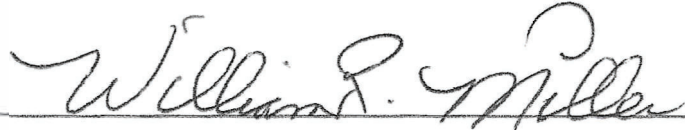
On page 49 of the Transcript, Claimant was asked about the incident of June 28th and Claimant confirmed that he argued with his immediate Supervisor, Foreman Chaney Hancock, when Hancock told Claimant to do his assignment and don't worry about the truck getting stuck in the mud as fixing the rail was more important.

The Carrier further suggested that Claimant attempted to intimidate Roadmaster Andujo during a safety meeting on July 22nd when Claimant was telling a story to the participants of the meeting about a shooter that had been near the Carrier property. It argued Claimant looked at Andujo in an intense and foreboding manner. The Board is not persuaded by that argument as there was no showing that Claimant's demeanor was quarrelsome and/or discourteous towards Claimant's superior in that instance. However, it is determined that the Carrier met its burden of proof that Claimant was guilty as charged in other instances.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 16 years of service with no active discipline on his record under review. The discipline assessed Claimant was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA), therefore, the Board finds and holds that the discipline was appropriate and will not be disturbed and the claim will remain denied because it was not excessive, arbitrary or capricious.

AWARD

Claim denied.

A handwritten signature in black 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 "Jeffery L. Fry 4/10/23", written over a horizontal line.

Jeffery L. Fry, Employee Member

Award Date: **April 10, 2023**