

**Case No. 395**  
**Award No. 395**  
**BNSF File No.14-22-0095**  
**BMWED File No. 0204-SL13C5-2208**

**Public Law Board No. 7048**

**PARTIES**     **) Brotherhood of Maintenance of Way Employes Division**  
                  **) ATSEFF System Federation**  
**TO**             **)**  
                  **)                     and**  
**DISPUTE:**    **)**  
                  **)**  
                  **) BNSF Railway Company**

**Board Members**

**Jeanne M. Vonhof, Chairman and Neutral Member**  
**Michelle McBride, Carrier Member**  
**Jeffery Fry, Employee Member**

**Statement of Claim**

“We Present the following claim on behalf of Teddy Martinez, Emp ID 1126523, for the removal of the Claimant’s Dismissal for Violation of MWOR 1.6 Conduct and HR Corp Policy Equal Employment Opportunity, Anti-Discrimination and Harassment. We request all record of discipline be removed from the Claimant’s record. The Claimant shall be made whole as a result of the Carrier’s actions.”

**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; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance with the Agreement that established the Board. The Board

shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules. The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

Claimant, Teddy Martinez, has worked for the Carrier for 24-25 years. Via notice dated April 20, 2022, the Claimant was informed that he was being dismissed from his employment with the Carrier. The notice stated that as a result of the testimony and exhibits brought forth at the investigation held on March 25, 2022, the Carrier determined that the Claimant, while employed as a Trackman on TMGX2335, had violated MWOR 1.6 Conduct and the HR Corporate Policy Equal Employment Opportunity, Anti-Discrimination and Harassment Policy. According to the Carrier, on March 10, 2022 the Claimant used racial slurs and profanity in a conversation with his supervisor and other employees at the Roswell, New Mexico yard.

Mr. Francisco Andujano testified that he had served as the Roadmaster at Carlsbad, NM. for about 30 months as of the date of the investigation. He testified that when he approached the Claimant at the Roswell yard on March 10, 2022, he intended to have an annual review with him, or an “annual safety review.” However, Andujano said that the Claimant said something like, “Let’s not and pretend that we did.” Andujano testified that he then decided to change course and have a broader discussion with the Claimant and other members of the Roswell crew regarding safety issues. In his statement and in his written testimony Andujano stated that the Claimant expressed dissatisfaction with the communication between Management and scheduled employees over safety concerns. According to Andujano, the Claimant said that because of the division between Management and scheduled employees over this issue, the Claimant said that he felt like they were “all the BNSF’s f\*\*\*\*\* n\*\*\*\*\*s,” after first apologizing to an African-American co-worker who was present for using the word “n\*\*\*\*\*.” The Claimant admits that he said the word “n\*\*\*\*\*” during this exchange but does not recall using any profanity.

The Claimant stated that he was upset because Andujano was discussing his annual review in front of his co-workers and a recent medical procedure the Claimant had undergone. Andujano testified that he did not discuss the Claimant’s annual review, prior discipline, or other personal matters in front of the other employees. The investigation included a statement from another employee, Ryan J. Steele, who was present for the conversation, who said that Andujano did discuss the Claimant’s annual review during the conversation.

Andujano stated that the Claimant has been trained on the Company’s policies regarding anti-discrimination and harassment and that employees are trained that they may not use racial slurs under that policy. He stated that the “n” word refers to ethnicity or race and is offensive, even if those overhearing it were not offended. Andujano said that with regard to the MWOR Rule 1.6 violation, the Claimant was “discourteous” but not “quarrelsome.” He testified that use of the word creates a hostile work environment, however, and therefore, he concluded that the Claimant engaged in an act of hostility in the workplace, which is also prohibited by Rule 1.6.

The Claimant’s stated that he made the comment “in the heat of the moment.” He testified in the hearing that he did not mean the comment racially, but rather to indicate a class of employees, who were being treated like “indentured servants.” He said that Andujano required

“unconditional submission” and that Andujano tried to create a sense of personal inferiority, telling employees that they were “just a Trackman,” to “keep the slaves in their place.” The Claimant said that he did not feel that he was being listened to with regard to his safety concerns. The Claimant testified that he did not call anyone the “n” word or refer to the color of anyone’s skin. The Organization presented a text message from the African-American employee who was present during the incident, who said that he was not offended.


The Claimant stated that after the fact he recognized that it was wrong to use this word. He stated that at the time Andujano took him aside and talked to him about not using this word in the workplace. The Claimant said that he considered this a Coaching and Counseling session and that Andujano said that he did not intend to take it any further.

The Carrier argues that the Claimant used a very serious racial slur in the workplace; that this conduct violates Rule 1.6 with regard to discourtesy and hostility and violates the Company’s anti-discrimination and harassment policy, a dismissible offense. The Claimant admits to using the “n” word in the workplace. There is no place for the use of this word in the workplace, and as the Carrier argues, it is offensive and disrespectful, even if other employees who overhear it say that they are not offended by it. Therefore, the Board concludes that there is substantial evidence that the Claimant using this word violates the standards of courtesy that the Carrier expects from its employees. The Company has notified employees of these expectations through its policies and training.

Nevertheless, the Board concludes that the penalty of dismissal is excessive for the Claimant’s single use of this word on this one occasion, under the circumstances present in this case. The Claimant has 24 years with the Carrier. Even though he should not have used the word at all, he recognized that using it may be especially offensive to an African-American person overhearing it, and apologized for using it in the presence of his African-American co-worker as he did so. At the time he used the word, he was upset over his belief that the Roadmaster was treating him with disrespect by the public discussion of his annual review, and by not taking seriously his view of poor labor-management communications over safety issues. The Claimant’s concerns do not excuse his use of this word. Nevertheless, the Board concludes that he did not use the word as a racial slur to denigrate or disrespect any other employee in the workplace. He did not call anyone by that name and did not use it to refer to any African-American person, or use the word as verbal abuse motivated by racial animus. He apologized in his written statement for using the word and demonstrated that he recognizes that he may never use this word in the workplace. Under these circumstances, the Board concludes that the penalty of dismissal is too excessive and the Claimant shall be returned to work without backpay, and with time out of service converted to a Level S Actual Suspension, with a Three-Year review period.

## AWARD

The claim is sustained in part. The Claimant shall be reinstated without backpay, and his dismissal and his time out of service converted to a Level S Actual Suspension, with a Three-Year Review period.

Signature 

Jeanne M. Vonhof  
Neutral Member and Chairperson



Michelle D. McBride  
Carrier Member



Jeffery Fry  
Employee Member

Date of Award: August 28, 2024