

**PUBLIC LAW BOARD NO. 7564**

Case No. 102/Award No. 102  
Carrier File No. 10-19-0131  
Organization File No. C-19-D040-10  
Claimant: Scott A. McCoid

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BNSF RAILWAY COMPANY )  
 )  
-and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYEES DIVISION )  
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**Statement of Claim:**

By letter dated February 4, 2019 Motor Vehicle Operator Scott A. McCoid was assessed a Level S Actual Suspension and a three year review period for allegedly violating HR Corporate Policy Violence in the Workplace, MWOR 1.6 Conduct and MWOR 1.7 Altercations. The March 23, 2019 claim by the Organization, Randy Anderson, Vice General Chairman, states that the discipline “is inappropriate, excessive and should be overturned immediately.”

**Facts:**

By letter dated December 12, 2018 the Claimant was informed that “An investigation has been scheduled at 0900 hours, December 19, 2018, at the Gibson Yard Conference Room, 4302 Gibson Road, Omaha, NE, 68107 for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged improper conduct which allegedly occurred during a physical and/or verbal altercation with a fellow employee on December 5, 2018 at or near East Siding Switch at Island Park, IA while working for the BNSF Railway. By mutual agreement, the investigation was postponed until January 7, 2019, time and location unchanged.

**Carrier Position:**

The Carrier insists that the investigation was fair and impartial, that any alleged defects were not shown to have prejudiced the Claimant and that he was not prejudged. Evidence shows that the Claimant grabbed Welder Christopher Herrmann. Moreover, the Claimant’s admission that he violated MWOR 1.6 and MWOR 1.7 provides the required substantial evidence. He disregarded and violated rules designed to provide a safe workplace for himself and others. He could have been dismissed for his violations, but the Carrier showed leniency, which is its prerogative but not the Board’s. The Level S Actual Suspension was in accordance with the Policy on Employee Performance Accountability (PEPA). The Board should not disturb the discipline.

**Organization Position:**

The Organization contends that the Claimant did not receive a fair and impartial investigation and that his due process rights were violated. Special Agent Russell Smith labeled the Claimant as the suspect in his summary of the altercation, showing that the Claimant had been prejudged. Moreover, the summary was inaccurate. The Claimant had no intent to harm Mr. Herrmann and grabbed Mr. Herrmann's collar in an attempt to defuse the situation. The altercation was of very short duration, there were no lingering hard feelings and the two men continued to work together harmoniously. The Claimant was allowed to finish out his tour, indicating that the matter was not seen as serious. The men went to the ground when they slipped on the ballast. There was no evidence to support the allegations, let alone substantial evidence. The suspension, not in accordance with PEPA, was inappropriate, excessive and punitive rather than corrective. The claim should be sustained.

**Findings:**

The discipline and claim arose from a short-lived altercation on December 5, 2018. The 160-page investigation transcript can be succinctly summarized to provide relevant information. The Claimant was one of four (4) employees working to clear switches following nine (9) inches of snow and some rain in the vicinity of the East Siding Switch at Island Park, IA. Snow had been removed from two switches without incident. The Claimant cracked the third switch without alerting Mr. Herrmann, who had his back to the Claimant. Because two of the four employees were within the switch, Mr. Herrmann believed that the Claimant had committed an unsafe act. At Mr. Herrmann's urging, he and Frog Grinder Dustin Parde returned to their truck and prepared to leave. Seeing Mr. Herrmann about to leave, the Claimant yelled twice at him asking what the problem was. Mr. Herrmann approached the Claimant, was in the Claimant's words, in his face, and with a finger pointed at the Claimant, with a raised voice and said, among other things, "don't you throw that fucking switch again with guys inside that switch". The Claimant testified that he had had enough of Mr. Herrmann, slapped his hand away from his face, grabbed his collar and told Mr. Herrmann not to threaten him again. The Claimant stated that he "couldn't take him abusing me in that situation" and that he had grabbed Mr. Herrmann to calm him down. The Claimant lost his footing on the slippery ballast and with his hands still on Mr. Herrmann, both went to the ground with the larger Claimant on top. Mr. Parde and Foreman Joshua Price told the Claimant to let Mr. Herrmann up, the men got up and the incident was essentially over. The Claimant reported the incident to Roadmaster Cayetano Chavez Garcia and the next morning the four men were interviewed by BNSF Special Agent Russell Smith. The Board has relied on the testimony adduced at the investigation rather than Agent Smith's summary because elements of the summary are not supported by testimony.

The Board has considered the Organization's oft-made allegations that the investigation was not fair and impartial, that the Claimant was deprived of due process and that he was prejudged and finds that these assertions are without evidentiary support. The Board accepts the Claimant's contentions that he did not intend to hurt Mr. Herrmann and that he did not intend to put Mr. Herrmann on the ground, but simply slipped on the wet ballast. It is not determinative that the Carrier allowed the Claimant to finish out the day rather than immediately suspend him. After all, separation was achieved when Mr. Herrmann and Mr. Parde departed the scene. The Board

believes both the Claimant and Mr. Herrmann that the altercation did not result in continued animosity. Furthermore, the Board notes that there is no evidence that the Claimant used profanity, as opposed to Mr. Herrmann. The Achilles heel in the Claimant's case is that he grabbed Mr. Herrmann's coat and in so doing escalated what had been a verbal confrontation to a physical confrontation. With the clarity that comes with hindsight, the better choice would have been to turn and walk away so as to defuse the confrontation. Fortunately, Mr. Herrmann did not physically engage and the inadvertent fall resulted in no injuries, but the outcome could have been far worse. Railroading is a hazardous occupation. The Carrier has every right to promulgate policies and rules to minimize additional hazards that might come from altercations or even full-blown fights. The Claimant, as the Carrier contends, admitted that he violated the policy on violence and MWORs 1.6 and 1.7. The Actual Suspension is a high price to pay for a momentary lapse, but the Board views it as corrective discipline that is sanctioned by PEPA at IV.A.4 that states "Where the Policy provides for the imposition of a Record Suspension, a supervisor has the discretion to impose an Actual Suspension if warranted."

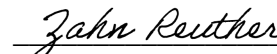
**Award:**

Claim denied.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.

  
Zachary C. Voegel, Organization Member

  
Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas  
Date: July 30, 2020