

SPECIAL BOARD OF ADJUSTMENT NO. 7564

Case No.: 29/Award No.: 29
Carrier File No.: 10-13-0007
Organization File No.: C-13-D040-1
Claimant: Jim J. Steggall

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim:

The Carrier violated the Agreement when on September 25, 2012 Claimant Jim J. Steggall was issued a Level S thirty (30) day record suspension and a three (3) year review period for violation of GCOR 1.6 Conduct and HR 90.4 Violence in the Workplace.

As a consequence of the violation, the Carrier should expunge the discipline from the Claimant's personnel file.

Facts:

By letter dated August 17, 2012 the Claimant was directed to attend an investigation on August 24, 2012 "for the purpose of ascertaining the facts and determining your responsibility, if any, in conjunction with your alleged sexual & verbal misconduct, and your display of hostility towards other employees, between August 6, 2012 & August 13, 2012, while working at/or near MP 394.0, Butte Subdivision while assigned as a Foreman assigned to Mobile Gang TTPX0034. First knowledge to Officers of the Company was August 13, 2012" After a mutually agreed to postponement, the investigation was conducted on September 11, 2012.

Carrier Position:

The investigation was fair and impartial as the Claimant was present throughout, was able to examine the evidence, question witnesses, testify and make a closing statement. The Organization's post-investigation objection to the Conducting Officer's leading questions should be ignored because no such objections were made during the investigation and no prejudice to the Claimant has been shown. There is substantial evidence that the Claimant threw rocks and used vulgar and sexually inappropriate language. The HR investigation into Machine Operator Heusman's complaints was

supported by testimony. The credibility determinations of the Conducting Officer must stand in accordance with industry precedent. Machine Operator Heusman testified that he felt "belittled and degraded" by the Claimant's remarks. Machine Operator Knapp testified that the Claimant's behavior was not the standard for other Foremen and other gangs. The Claimant admitted to throwing rocks and using vulgar and inappropriate language and did not remember, but did not deny, making sexually explicit statements. The Organization is, in essence, asking for leniency, which is the sole prerogative of the Carrier. In fact, the Carrier has exercised leniency because the Claimant could have been dismissed because of his behavior and because this was his second Level S discipline within a year. Because the claimant has not lost wages with this record suspension, an award in his favor should result only in expunging the discipline from his personnel records.

Organization Position:

The investigation was not fair and impartial because the Conducting Officer asked leading questions and the investigation was "a formality required by the agreement before the announcement of a preconceived judgment." The facts in this case are disputed. There was no confirmation that the Claimant flicked Machine Operator Heusman's ear as the latter alleged. Machine Operator Heusman said that the Claimant violated the rules while the Claimant's denial was supported by Machine Operator Knapp and Truck Driver Misner. The Claimant forthrightly said that he could have thrown rocks and used vulgar language, but this must be viewed within the context of long-time, daily behavior that has included common use of rough language by non-exempt employees and exempt officers alike. Mutual razzing and use of vulgar language has been widely accepted. If Machine Operator Heusman was offended by the language used by the Claimant, the former could have gone to the Claimant to try to work things out. It is possible that Machine Operator Heusman's attitude played a role in this dispute. It should be noted that the Claimant was Foreman over an all-male gang working out of the public eye.

Findings:

The investigation was fair and impartial with no compelling evidence that the Claimant was prejudged. The Organization's concern with leading questions should have been expressed during the investigation rather than in the appeal that followed. While it was entirely possible that the complaint against the Claimant stemmed from a personality conflict with Machine Operator Heusman, that does not diminish the fact that there is substantial evidence, including the Claimant's admission, of his behavior. The Board does not conclude that the Claimant flicked Heusman's ear and has not considered the rock throwing allegation because the Notice of Investigation did not mention rock throwing. Machine Operator Heusman's allegation that the Claimant said that the gang could go home early if he was given a blow job was confirmed by Truck Driver Misner and never denied by the Claimant, who said he did not remember this but might have used those words. All testified to the ongoing use of vulgar language and, while not all found it objectionable, even the Claimant acknowledged that such language is inconsistent with the meaning and intent of HR 90.4 and CGOR 1.6. The Board fully

realizes that railroading is a rough, dangerous industry that has for far too long given rise to rough and even vulgar language. Violation of the above-noted rules is not related to or dependant upon the reaction of those who are the objects of or who simply hear the language. The obvious intent of the rules is to eliminate such language so that individuals will not be offended with resulting distractions that could result in unsafe conditions. That this gang was all male may make the use of sexual innuendo slightly less odious in the eyes of some, as might the gang's operations out of the public eye, but these elements do not come close to excusing what took place.

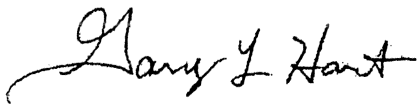
The Board is aware that some of the Claimant's words may have been viewed as "business as usual," in view of the history in the industry, but the Board is equally aware that the Claimant received a Level S thirty (30) day record suspension and a one (1) year review period on February 8, 2012 for "quarrelsome and discourteous behavior when using inappropriate language towards your supervisor and other employees" in violation of MOWOR 1.6. The earlier Level S discipline should have served to inform the Claimant that "business as usual" is no longer acceptable. In view of his long service with the Carrier or its predecessors, the Board hopes that this second warning as to how the Carrier views inappropriate language is taken to heart so that there is no "third strike."

Award:

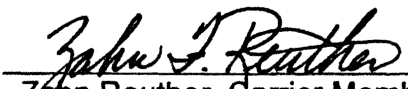
Claim denied.

Order:

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



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
February 12, 2014