

PUBLIC LAW BOARD NO. 7564

Case No. 54/Award No. 54
Carrier File No. 11-15-0001
Organization File No. S-P-1894-G
Claimant: Travis L. Boston

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

Statement of Claim:

By letter dated July 25, 2014, Section Foreman Travis Boston was dismissed for an alleged violation of MOWOR 1.6 Conduct, MOWOR 1.9 Respect of Railroad Company and MOWOR 1.10 Care of Property. The September 3, 2014 claim from the Organization, Vice General Chairman Tim Gillum, appealing the dismissal, states: "As a consequence of these rules violations, claimant Boston should have his record cleared and be resonated back to his former position with all seniority intact. Mr. Boston should also be made whole for all his losses including but not limited to wages including overtime and benefits."

Facts:

By letter dated April 10, 2014 the Claimant was informed that "An investigation has been scheduled at 1300 hours, Thursday, April 17, 2014, . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in conjunction with alleged violations that occurred leading to your arrest on police case number 1452001068, at approximately 1900 hours, April 9, 2014, concerning BNSF property found in your home . . . , while you were assigned as Section Foreman (TSEC0501). Alleged violations include but are not limited to theft, dishonesty and misconduct affecting the interest of the company."

Claimant Boston was further informed that he was being withheld from service pending the results of the investigation.

After five mutually agreed upon postponements, the investigation took place on July 7, 2014 at the initially-specified location in Everett, WA.

Carrier Position:

The Carrier notes that \$20,000 worth of Carrier property was found throughout Claimant Boston's residence, with the property identified by Carrier personnel. The Claimant's explanations for the found property were not at all persuasive. There is the required substantial evidence of the theft, which is not only a stand-alone dismissal offense under the Policy for Employee Performance Accountability (PEPA) but also the second serious violation within a 36-month review period. If there were procedural errors during the investigation, the Organization has not shown that they resulted in harm or prejudice to the Claimant. If there is to be leniency, it is the prerogative of the Carrier and not the Board. If the claim is sustained, the Claimant should be reinstated and receive compensation only for lost wages offset by outside earnings while off the active payroll.

Organization Position:

The Organization insists that there is no proof that the items recovered from Mr. Boston's residence were stolen and notes that he had permission to borrow some of the property, while some was his own. Some of the Carrier property was at the Claimant's residence so that he could make necessary repairs. Because the charges involve theft, the Carrier should be held to a high degree of proof. At worst, the Claimant was guilty of poor judgment. Mr. Boston has 18 years' tenure and has overcome drug dependence. The dismissal was punitive when the Carrier should have used corrective discipline.

Findings:

The testimony of Roadmaster Fullen, Structures Supervisor Gordon and Special Agent Nies provides not just substantial but unrefutable evidence that an abundance of property identified as the Carrier's was found throughout the Claimant's house, including under beds and in the attic. Among the property recovered were chainsaws, a sledgehammer, spike mauls, needle bars and DeWalt cordless tools. In all, \$20,000 worth of Carrier property was located throughout the house. The Claimant's explanation that some of the property was his and some was Carrier property at his residence to be repaired does not begin to approach a persuasive explanation for the horde that was recovered. Moreover, the Claimant provided no explanation whatsoever for the presence of property under beds and in the attic. Additionally, none of the property might have been discovered if the Claimant had not been seen leaving Carrier premises with Carrier property in his possession. The evidence compels a conclusion that the property found at the Claimant's residence was stolen from the Carrier. His intent was obvious, as is the violation of the above-noted rules. That theft of this magnitude is a stand-alone dismissible PEPA violation needs no explanation.

Award:

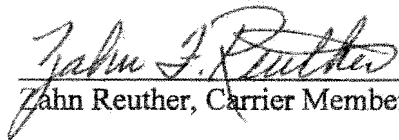
Claim denied.

Order:

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



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
August 15, 2017