

PUBLIC LAW BOARD NO. 7564

Case No. 60/Award No. 60
Carrier File No. 10-15-0155
Organization File No. C-15-D040-12
Claimant: Michael Reed Mellenthin

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

Statement of Claim:

By letter dated January 28, 2015 Welder Michael Mellenthin was issued a Standard Formal Reprimand with a one-year review period for an alleged violation of MOWOR 1.6 Conduct. The March 1, 2015 claim from the Organization, George Loveland, Vice General Chairman, asserts that the discipline was excessive, arbitrary and capricious and asks that it be overturned and that the Claimant “be compensated, credited and made whole for any time or benefits lost and that his discipline be removed from and no mention made of this be placed on his personnel record.”

Facts:

By letter dated December 19, 2014, the Claimant was informed that “An investigation has been scheduled at 1000 hours, Monday, December 29, 2014 at . . . Aurora, IL . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged misconduct when you approached Bill McCaskill in a quarrelsome and discourteous manner in the Eola meeting room at approximately 0630 hours on December 19, 2014.” The letter further informed the Claimant that he was being withheld from service pending the outcome of the investigation.

Carrier Position:

The Carrier finds this to be a classic case of “conduct unbecoming,” with written statements and testimony providing the necessary substantial evidence that the Claimant had been quarrelsome and discourteous. The investigation was viewed as fair and impartial, with any procedural defect not resulting in harm or prejudice to Welder Mellenthin. Leniency is the

province of the Carrier, not the Board. If the claim is sustained, the proper remedy is simply removal of the discipline from the Claimant's records, since no loss of pay was involved.

Organization Position:

The Organization insists that the investigation was not fair and impartial because Conducting Officer Lopez investigated the incident and Division Engineer East Ferencak, who issued the discipline but was not at the investigation, had questioned the Claimant about the incident prior to the investigation. The Carrier did not handle the situation properly and then issued excessive and arbitrary discipline.

Findings:

The investigation of the December 19, 2014 incident resulting in Welder Mellenthin's reprimand provided evidence that the Claimant and Laborer McCaskill had at least a short history of interpersonal conflict prior to December 19. The Board also notes Sectionman Hollister's testimony that the Eola meeting room in which the December 19 incident occurred had two electrical outlets in addition to the one Claimant Mellenthin used to plug in his laptop. Knowing of the tension between himself and Laborer McCaskill, the Claimant entered the meeting room, walked directly toward the Laborer and in the process of plugging in the laptop, brushed Mr. McCaskill with his shoulder. The Claimant had made no attempt to use one of the other electrical outlets so that he could distance himself from Mr. McCaskill, admitting that he had not looked for an alternative. Laborer McCaskill used bad judgment when he reacted with the "F word," but the profane response was simply part of a verbal attempt to have the Claimant move or be moved. Mr. McCaskill testified that he felt threatened.

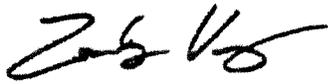
There is substantial evidence that the Claimant deliberately provoked the incident. In an industry which is inherently hazardous, there is no need for employees inclined to provoke others and in so doing adding to potentially hazardous conditions. The Board finds no reason to set aside what is hopefully corrective discipline.

Award:

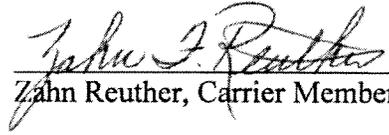
Claim denied.

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