

PUBLIC LAW BOARD NO. 7564

Case No. 69/Award No. 69
Carrier File No. 10-16-0071
Organization File No. C-16-D040-5
Claimant: Michael A. Luther

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

Statement of Claim:

By letter dated October 2, 2015 Motor Vehicle Operator Michael A. Luther was given a Level S 30-Day Record Suspension and a Three (3) Year Review period for an alleged violation of MWOR 1.6 Conduct and MWOR 1.7 Altercations. The November 6, 2015 claim from the Organization, George L. Loveland, Vice General Chairman, appealing the discipline asks that the Claimant "be compensated for any time lost, made whole for any losses associated with the outcome of this investigation, any future losses that may arise as a result of this investigation being used for progressive discipline and that this discipline be removed from and no mention of this be placed in his personnel record."

Facts:

By letter dated August 6, 2015 the Claimant was informed that "An investigation has been scheduled at 0900 hours, Friday, August 14, 2015, at the BNSF Railway Engineering Office Building Conference Room, 1670 South Henderson, Galesburg, IL, 61401, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged discourteous behavior and use of profane language, when you engaged in an aggressive discussion with your Foreman, Marcial Perez and supervisor, John Reid during a morning briefing at approximately 0800 hours on Friday, July 31, 2015 while you were working as a Truck Driver." By mutual agreement, the investigation was postponed three times before taking place at 0900 hours at the original location.

Carrier Position:

The Carrier insists that the investigation transcript and attached statements provide substantial evidence of the altercation and the Claimant's behavior. The Organization now asks for leniency, which is the province of the Carrier, not the Board. If the claim is sustained, the

remedy should involve only the removal of the discipline from the records since the Claimant did not lose wages as a result of the record suspension. The Claimant received a fair and impartial investigation. The Organization has not shown that the Claimant was prejudged or that any alleged procedural defects prejudiced the Claimant. There is no requirement that the Conducting Officer also issue the discipline.

Organization Position:

The Organization avers that the incident of concern did not take place at the morning briefing as stated in the Notice of Investigation (NOI), therefore the allegations are unfounded. Roadmaster Reid's inconsistent testimony is "full of accusations, innuendos, and mendacities." The Conducting Officer, who led Carrier witnesses, had his mind made up. He was not the individual who issued the discipline. The Carrier did not produce substantial evidence as there is no evidence of profanity and vulgarity. The investigation was not fair and impartial because the Claimant was pre-punished when he was not paid for attending the investigation.

Findings:

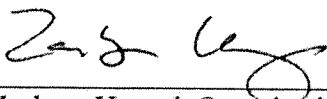
The testimony of Roadmaster Reid, Welding Foreman Perez, Assistant Foreman Anderson and COT Driver Vangilder, plus the legible statements, establish that the Claimant was loud and argumentative on the morning of July 31, 2015 and that his profanity involved the use of the word "bullshit." While the profanity was mild compared to what passes for shop talk in this industry, it was inappropriate in the context of the discussion about coordination. The Board finds that the Claimant's testimony can be accurately characterized as something akin to a stream of consciousness that did not directly address the incident. The Board finds that the Carrier has produced substantial evidence in support of the charges. The Carrier's decision to consistently apply a policy of not paying Claimants for their attendance at investigations is not considered evidence of pre-judgment, as the Organization surely is aware.


Award:

Claim denied.

Order:

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


Zachary Voegel, Organization Member


John Reuther, Carrier Member

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A handwritten signature in black ink, appearing to read "I. B. Helburn", followed by a long horizontal line extending to the right.

I. B. Helburn Neutral Referee

Austin, Texas
January 31, 2018