

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 215

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2020-00016

Claimant: J. Burclaw

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The discipline [sixty (60) day actual suspension from service] imposed upon Mr. J. Burclaw for alleged violation of company rules, regulations and/or policies the morning of December 20, 2019, in which he allegedly was quarrelsome and/or harassing Engineering Clerk Erin Rajski was arbitrary, capricious and in violation of the Agreement (Carrier's File WC-BMWED-2020-00016 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Burclaw's personal record shall be cleared of the charges immediately and he shall be provided the remedy prescribed in Rule 31 of the Agreement. Additionally, the Claimant shall have his seniority restored, his accredited months of service and all benefits that were not received during his time out of service.”

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Claimant was notified by letter, dated January 9, 2020, to attend a formal investigation:

The investigation is being held to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred on the

morning of December 20, 2019, in which you allegedly were quarrelsome and/or harassing Engineering Clerk Erin Rajski, and whether you violated any Company rules, regulations and/or policies in connection with the incident...

Following the January 21, 2020, hearing, Claimant was sent a letter dated January 27, 2020:

I have reviewed the transcript of the formal investigation, which was held on January 21, 2020, to develop the facts and to determine your responsibility, if any, and whether or not you violated any CN rules, regulations and/or policies in connection with an incident that occurred on the morning of December 20, 2019, in which you allegedly were quarrelsome and/or harassing Engineering Clerk Erin Rajski.

The record contains credible testimony and substantial evidence proving that you violated: Violation Type: Level 2 USOR General Rule H – Furnishing Information and Conduct CN Code of Business Conduct In consideration of the incident, the proven rule violations, and your past discipline record, you are hereby assessed the following discipline(s):

Claimant was assessed a sixty-day actual suspension. This claim followed.

The Carrier maintains substantial evidence of the infraction was established. Claimant was working as a track foreman assigned to Stevens Point, Wisconsin. He was on-duty on December 20, 2019. While on duty, he used the Carrier instant messaging application to harass another employee. A coworker complained and a supervisor went to Claimant's office to investigate. The messages were found and the messages were harassing. There is no question Claimant sent the messages. The messages are intended to harass the coworker. The discipline was commensurate to the misconduct.

The Organization maintains that Claimant's messages were neither harassing nor intimidating. He was not vulgar, inappropriate, or threatening. He stopped sending messages when asked. He was not inappropriate, and the Carrier has not shown that the employee felt harassed or that a reasonable person would feel threatened by Claimant's messages. The Organization claims that there is no substantial evidence of an infraction.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the

decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

The evidence shows that Claimant and his wife both work for the Carrier. Claimant's wife was bumped. Despite not knowing Ms. Rajski and being subject to another Agreement than his wife, Claimant chose to insert himself. Rather than let his wife make an inquiry about the bump, if she chose to inquire, Claimant chose to get involved by instant messaging Ms. Rajski.

Track Supervisor Ruder testified about the instant messages Claimant sent:

- Q. So, Mr. Ruder, you stated that this is a screenshot from where exactly?
- A. Mr. Burclaw submitted this to me. This is -- it was a screenshot of his phone that he took of his computer, his interaction with Erin.
- Q. If you would, Mr. Ruder, could you please read the discussion into the record?
- A. Sure. First one is from Joe. It says, "The Union is" -- "is involved now." Erin replied with, "With?", question mark. Joe said, "The crap you and Roger are pulling." Erin replied, "I have nothing to do with it. I am doing my job, Joey. Stephanie was fine with me when she left. Please leave me out of it as I am trying to work. You should do the same." Joe replied, "Nope. I protect my family when people mess with it. Maybe you guys should read your contract because" -- "better because it states you can be bumped at any time during your shift." And Erin replied, "Please stop harassing me."

Claimant testified about his actions:

- Q. Mr. Burclaw, looking at Exhibits No. 2 and No. 3, which are the screenshots of the instant messaging between you and Ms. Rajski, for the record, could you verify that these are, indeed, of the same conversation?
- A. Yes.
- Q. Mr. Burclaw, if you would, please -- I guess, do you have regular interaction with Ms. Rajski?
- A. No. I've met her once.
- Q. Do you know what Ms. Rajski's position is with CN?
- A. She was a clerk for Roger Wolf.

- Q. Okay. Mr. Burclaw, if you don't have regular interaction with Ms. Rajski, I guess what - - what would have triggered a conversation on Skype between you and her?
- A. My wife made a bump. She bumped -- my wife works with the Company too. So she made a bump that morning. And stuff seemed fishy.
- Q. Okay. And, Mr. Burclaw, in the conversation here when Ms. Rajski had asked "Please leave me out of it as I'm trying to work, and you should do the same," and you responded, "Nope," I guess at what -- why would the conversation have to continue after that point?
- A. I was just trying to find out the truth being -- financially, as my wife was told to go home. And that's money out of my pocket. So I was just trying to find the truth as I know my contract and I know their contract. They are not the same.

The evidence shows that Claimant continued to communicate in a harassing manner even after Ms. Rajski asked him to cease with her message "please leave me out of it." Grievant did not cease, but instead messaged:

Nope. I protect my family when people mess with it. Maybe you guys should read your contract better because it states you can be bumped at any time during your shift.

Grievant chose the phrases "protect my family" and referenced "when people mess with [my family]." These phrases were designed to convey a message – a message that Claimant's family was being "messed with" and that he was "protecting" them.

Claimant testified about how he knows the contract provisions of the two Agreements. He is therefore also aware of the process for filing a claim for improper bumping. He is also aware that his wife's Union is the organization that ensures her rights under the Agreement are not violated. There is no provision in the claims process for spousal action.

If Claimant's wife had been improperly bumped, then his wife could have filed a claim. There was no reason for Claimant to conduct himself in this manner and harass a coworker.

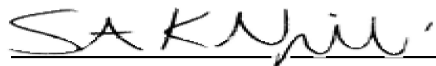
Claim denied.



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Adam Gilmour

Organization Member



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Steven Napierkowski

Carrier Member



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Brian Clauss

Neutral Member

Dated: December 18, 2024