

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 106**  
**Carrier File No.: 10-21-0150**  
**Organization File No.: C-21-D040-12**  
**Claimant: N. Ralston**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
**-and-** )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYES DIVISION - IBT** )  
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**STATEMENT OF CLAIM:**

The Organization claims that BNSF Railway Company violated the Agreement when Claimant was issued a Standard Formal Reprimand with a one (1) year review period resulting from a formal investigation held on January 22, 2021 for violating Maintenance of Way Operating Rule (MWOR) 1.6 "Conduct," for discourteous conduct while attending the Powder River Safety Stand Down at/or near the Cheyenne Depot on December 11, 2020, while assigned as a Track Inspector on Headquartered Gang TINS2948.

**CARRIER POSITION:**

On December 11, 2020, employees met at a safety stand-down meeting on the Powder River Division to discuss various safety incidents that had occurred. During the job safety briefing, the need for wearing a mask due to COVID-19 was expressed. Roadmaster J. Gribble reported that many became upset when Claimant walked to the bathroom, wrapped toilet paper around his head as a mask, then walked back into the briefing area. He did not give any names or describe any behaviors consistent with being 'upset.'

Claimant has admitted to his actions, establishing that the toilet paper conduct occurred. The Carrier asserts this conduct was highly inappropriate, offensive and disrespectful, and as such, it warranted the reasonable discipline taken of a Formal Reprimand.

## **ORGANIZATION POSITION:**

The Organization maintains the Carrier is holding Claimant to an unreasonable standard. According to Claimant, when a supervisor asked him to put on a mask, he jokingly replied that he already had one on. The Organization points out that he was plainly trying to reduce tension and he readily complied with the request to put on a mask. In its view, the actions taken by the Carrier were far too severe.

## **DECISION:**

The charge against Claimant was discourtesy. If Claimant's actions visibly upset other employees, as alleged by the Carrier, then direct evidence should have been submitted on this point. But there was no testimony from anyone claiming to have been being upset, and Gribble's testimony was conclusory, devoid of example or specific description.

Claimant, by using toilet paper, was obviously mocking the mask requirement, but it is not at all clear that this was in a malicious way, as opposed to a humorous one. Indeed, Claimant asserted without rebuttal that "I got laughs out of it," (TR 17) and indicated 99% of those present joined in. Claimant described the room as tense because people had been driving through bad weather to get to the meeting, then met in a small room where they were told to wear masks. He explained his intent was only to lower the tension in the room.

This case would be different had Claimant refused to remove the toilet paper or to put on a mask, or if he had made discourteous comments. The evidence does not establish any intent to be discourteous, or to continue in a behavior after he was told it was perceived as discourteous. Further, Claimant had served the Carrier since 1999 without disciplinary action. This is a significant mitigating circumstance that was not taken into account. In sum, the evidence is not adequate to establish that Claimant was volitionally discourteous, especially since he complied when asked to replace the toilet paper with a mask.

## **AWARD:**

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost, including overtime, as a result of this incident.

## **ORDER:**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

**Dated: February 16, 2023**



**Patricia T. Bittel, Neutral Member**



**Zachary Voegel, Labor Member**



**James Rhodes, Carrier Member**