

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 79
Carrier File No.: 10-18-0031
Organization File No.: C-18-D040-2
Claimant: M.W. Glisson

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

STATEMENT OF CLAIM:

The Organization claims that BNSF Railway (BNSF) wrongfully assessed excessive discipline (Level S, 30-day record suspension, 1 year review period) to Claimant for violating Maintenance of Way Operating Rules 1.6 (Conduct), and Maintenance of Way Operating Rules 1.13 (Reporting and Complying with Instructions), when Claimant failed to comply with instructions while working as a Welding Foreman in LPC Yard on September 12, 2017, at approximately 0845.

CARRIER POSITION:

The evening prior to the incident here concerned, Claimant, a welding foreman, briefed with BNSF Roadmaster Chad Poffenberger during which Claimant was instructed to use both welding trucks as he had plenty of guys to do so. When Poffenberger arrived on site the next day, he inquired why Claimant was not utilizing the second welding truck as instructed.

According to the Carrier, Claimant responded in a raised voice, insisting Poffenberger not to tell him how to do his job, then walked away. An eyewitness confirmed that Claimant was the only one to raise his voice. Poffenberger asked Claimant multiple times, in a calm tone, to come back and talk to him, but Claimant replied "I have nothing to say to you," and continued to depart. Poffenberger then gave Claimant the option of coming back to talk to him or going to the motel. Claimant elected to go to the motel.

ORGANIZATION POSITION:

The Organization asserts Claimant was denied a fair investigation in that the Conducting Officer was biased and argumentative with the Organization's representation. Further he led witnesses and offered to share his own testimony.

The Organization notes that it requested four eye witnesses from the Carrier, so that both the Organization and the Carrier would be able to ascertain the facts in the case and uncover the truth of what actually transpired. The Organization states it made this request days prior to the investigation and also at the hearing itself, but the request was denied. In its view, this constitutes a blatant denial of fair investigation.

At hearing, Claimant acknowledged that Poffenberger wanted him to come and talk to him; he admitted he responded "I've got nothing to say to you. I'm going to go do my job." When he started walking away, Poffenberger told him to either come talk to him or go to the motel. Claimant explained his decision to go to the motel was a way of avoiding confrontation.

The Organization maintains Poffenberger was upset, and without assessing the situation, jumped out of his truck and ordered employees to get the welding truck working. In its view, he should have been more concerned about employee safety and asked questions before jumping in. He failed to give Claimant the needed opportunity for a re-briefing. Further, Claimant cannot be considered insubordinate when he exercised one of the options offered by his supervisor.

DECISION:

Poffenberger testified as follows:

I had asked
17 him, or I had told him, excuse me, to work using both of his trucks
18 um because he had plenty of guys to do so. Uh instead, he had all
19 those guys working around the same welding truck, uh so I approached
20 him and told him to let's get the other welding truck going at the
21 same time. Uh at that point, he raised his voice and said that he
22 had a plan and told me not to tell him how to do his job, and he
23 began to walk away from me. I started to follow him, uh told him
24 that I wasn't done talking to him and for him to come back and talk
25 to me.
26 At that point, again, he raised his voice even more and told
me not to tell him how to do his job. Um and then at that point, I
2 told him that he had two options; he could either come back and talk
3 to me or he could go back to the hotel. And that's when he jumped

4 in the Pickup truck, the Company Pickup truck, and left. (TR 9, 10)

Claimant testified he was waiting for excavators to get their panels out of the way and make more room. Furthermore, at the time he did not have track authority. Poffenberger got out of his truck and asked why nobody was over there making welds. Claimant said he told Poffenberger that he had had a job briefing with a co-worker, Stoney, who was trying to get the track authority:

when I got through telling me that, he asked me
24 how come uh there wasn't nobody over there yet? That's when I got
25 uh excited or whatever." (TR39) "So I explained
4 to him, I said why don't you do jo your job and let me do my mine,
5 and he goes let me have some responsibility and try to micro-manage
6 everything I knew that the welds needed to be made. * * *

Um I did tell Mr. Chad uh Chi uh Chad Poffenberger uh if
21 he let him worry about his job and let me do mine. Uh he said come
22 talk to me. (TR 40).

Claimant asserted his men would have been in harm's way if they had moved the truck because it was tight quarters.

There is clearly a substantial divergence between Claimant's description of events and Poffenberger's. Claimant asserted he conducted a job briefing and lacked the required track authority or the physical space to do what Poffenberger asked; Poffenberger asserted that he saw an idle truck that should have been working. Before the Board can determine whether or not insubordination exists, it must make a finding as to whether the instructions Claimant was given were reasonable under the circumstances. If indeed there was no track authority and concrete panels physically blocked the work Poffenberger wanted done, then Poffenberger's order would not have been reasonable.

The Organization requested that eyewitnesses be brought in to clarify the facts. This was a reasonable request, particularly as to the worker named Stoney, whom Claimant described as engaged in obtaining track authority at the time of concern. However, the Carrier declined the Organization's request and did not so much as provide statements from any employe who was on the scene. In this situation, we can only make a negative inference and conclude that the evidence from eyewitnesses would have substantiated Claimant's description of the facts. We therefore find that the situation had changed since the briefing the night before, and Poffenberger's instructions were no longer reasonable.

Claimant admitted to getting "excited" and acknowledged that Poffenberger told him to come talk to him, a request with which he did not comply. When given a choice of whether to approach or go to the motel, Claimant elected to go to the motel, a choice offered by Poffenberger. Given these facts, the Board finds that Claimant became hostile with his supervisor and refused to comply with his initial directive to approach

and discuss. This conduct fell short of the requirement that as a foreman, Claimant must “Instill a safe, high-quality, and productive work environment through leadership, decisiveness, and employee development.” This is a lesser offense than the multiple rules violations with which he was charged.

AWARD:

The claim is granted in part. The Level S 30-day record suspension with a 3-year review period shall be removed from Claimant’s record, and shall be replaced with a Standard Formal Reprimand with a 1-year review period.

ORDER:

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member