

PUBLIC LAW BOARD NO. 7585

**Case No. /Award No. 93
Carrier File No.: 10-19-0160
Organization File No.: C-19-D070-3
Claimant: Z. Stagman**

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

STATEMENT OF CLAIM:

The Organization alleges that BNSF violated the Agreement when Claimant was dismissed as a result of a formal investigation held on January 8, 2019 for violation of Maintenance of Way Operating Rule 1.6 "Conduct" for his dishonesty when interviewed by HR Director Hannah Stadheim on Thursday, November 8, 2018 at approximately 1030.

CARRIER POSITION:

In July of 2018, the Carrier was contacted by the wife of Track Inspector Walker indicating concerns about employees driving past her house. A conference call was held on July 27, 2018 about the matter. Subsequently, HR Director Hannah Stadheim received other articulated concerns and opened an investigation. When she interviewed Claimant Stagman, he told her Walker's residence was on the route they were taking that day, and they just took a slight detour to go past the Walker home.

Stadheim then checked MapQuest and determined that Claimant had gone out of his way to the Walker home in a residential area with no throughways. She learned that Claimant had given Roadmaster Jones disparate statements, first that they did not ride by Walker's house, and later that the employees decided to ride by because Walker had not been seen at work that day.

The Carrier determined that the inconsistent statements constituted dishonesty, warranting dismissal. It denied any tardiness in the issuance of the Dismissal letter, noting that the Dismissal letter was mailed out February 5 and hand-delivered to Claimant on February 6, well within the 30-day contractual deadline.

ORGANIZATION POSITION:

The Organization protests the discipline on a number of grounds. It notes Stadheim told Claimant that their conversation would be confidential, then used it to discipline him. According to the Organization, Stadheim herself has been dishonest because she told Claimant he had to keep the conversation confidential while she failed to do so. The Organization notes the investigation took place January 8, 2019. However, the Organization did not receive its copy of the Dismissal Letter until February 9, 32 days after the Investigation and two days beyond the Rule 40 deadline.

The Organization asserts further denial of due process in that the Notice of Investigation was vague, alleging general misconduct and not specifying the offense. In its view, this vagueness failed to put either Claimant or his representative on notice of what the investigation was about.

In the Organization's view, Stadheim asked trick questions and this was the reason for any confusion in Claimant's answers. It notes Claimant was not even driving at the time of passing Walker's house.

DECISION:

We do not find a violation of due process in this case. The Organization accurately states that in referencing "misconduct with another employee" the Notice of Investigation was vague and failed to put Claimant or his representative on notice of what type of "misconduct" the Carrier had in mind. This was not fatal to the Carrier's case, however, because Claimant was terminated solely for dishonesty in his November 8, 2018 interview with HR Director Hannah Stadheim, and the Notice of Investigation was very clear in specifying this as an allegation and grounds for discipline.

Rule 40 states a decision must be rendered within 30 days. This requirement was met in that the dismissal letter is dated February 5, and issuance of that letter constituted the rendering of the disciplinary decision. Rule 40 goes on to say there is also a notification requirement. The obligation to render a decision, and the obligation to notify, are joined by the word "and," separating them; Rule 40 states the discipline shall be rendered within 30 days "and" notification shall be given to Claimant and his local representative. This language does not, by its terms, require that such notification occur within the 30-day limit established for rendering the decision. No prejudice has resulted from the timing of receipt by either Claimant or his representative; the notification was received, at most, two days after being rendered. We do not find that Rule 40 has been breached.

According to Stadheim's testimony at the Investigation, Claimant initially could not think of a time when he drove past a co-worker's house. TR 25. Upon further questioning, he admitted he was in a vehicle that drove past a co-worker's house on the way back. At this point, Stadheim pulled up MapQuest and showed Claimant that Walker's house

was not near any logical route that day. Claimant's response, according to Stadheim, was that they did not take the freeway and Walker's house was on the route.

After the interview, Stadheim spoke with Roadmaster D. Jones and learned that Claimant had at first denied going past Walker's house, then admitted to it. At the Investigation, Jones testified to an initial denial, followed later by admission. TR 14. His testimony is substantiated by contemporaneous documentation.

Stadheim studied MapQuest and determined that the employees could not have gone past Walker's house on the way back; it was simply too far out of the way. At this point she determined that Claimant had been dishonest in his statements to both her and Jones.

We do not agree that an expectation of confidentiality during an interview insulates an employee from any consequences if that employees falsifies information to an employer. The record in this case provides adequate evidence to support the Carrier's finding of dishonesty. Claimant told Stadheim that they went by Walker's house on the way back when it was out of the way. His statements to Jones were also false. However, the record is also clear that he backed away from his false statements and told the Company the truth. This cured the information relied upon by the Company and served as an important mitigating circumstance which the Carrier apparently ignored.

When the Company seeks truth from its employees, no matter what the subject, it relies on employee truthfulness to reach conclusions about anything from equipment safety to effective practices. There can be no question as to whether untruthfulness constitutes dishonesty; untruthful answers are dishonest by definition. However, it cannot be said that the bond of trust between employer and employee was irreconcilably breached in this case; Claimant belatedly did tell his employer the truth.

The incident was indeed serious in nature. However, the Carrier's maximal disciplinary penalty does not match the seriousness of the offense.

AWARD:

The claim is granted in part. Claimant shall be offered reinstatement subject to the Carrier's return to service policies. The Carrier shall remove the dismissal from Claimant's record, with seniority, vacation and all other rights restored. The disciplinary penalty shall be changed to a 30-day Actual Suspension with a three-year review period. The Carrier shall make him whole for all time lost as a result of this incident beyond the suspension, less any interim earnings from replacement employment. Lost overtime shall be compensated at the overtime rate. Claimant's medical insurance shall be retroactively restored, with deduction from the backpay herein granted of any premiums which would have been withdrawn had his employment remained uninterrupted. To the extent Claimant purchased replacement insurance during his time of separation, he shall be reimbursed for the premiums. His backpay shall be contingent upon his providing the Carrier with

reasonable proof of income, including his tax records as well as proof of replacement insurance premiums and any claims paid under that insurance. Any discipline current at the time of his dismissal, including any on-going review period, shall resume in applicability to the extent of its remaining duration at the time of his dismissal. Any other claims not expressly granted by this Award are hereby denied.

ORDER:

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

Dated: November 25, 2020

A handwritten signature in blue ink, reading "Patricia T. Bittel".

Patricia T. Bittel, Neutral Member

Zachary C. Voegel

Zachary Voegel, Labor Member

A handwritten signature in blue ink, reading "Samantha Rogers".

Samantha Rogers, Carrier Member