

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 96  
Carrier File No.: 10-19-0199  
Organization File No.: C-19-D070-7  
Claimant: A. Weisinger**

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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 alleges BNSF violated the Agreement when Claimant Weisinger was dismissed as a result of a formal investigation held on March 28, 2019 for Claimant's violation of Maintenance of Way Operating Rule 1.6-"Conduct" and 1.7 "Altercations" for misconduct when he was involved in a physical altercation and struck another employee on Wednesday March 20, 2019 at approximately 1520 hours at the Fort Madison B&B shop, while assigned as a Structures Mechanic.

**CARRIER POSITION:**

On March 20, 2019, the Carrier received reports of a physical altercation between employees. It obtained statements from all involved, including Claimant Weisinger, M. Holland, S. Stark and D. Harris. In Claimant's statement, he said Harris was verbally aggressive. Claimant's statement included the following, quoted verbatim:

The heat was rising in both of us and I told him if he has an issue to go talk to Matt Holland, our supervisor. I repeated this multiple times. I stood up and walked over to him and asked him to leave the building multiple times. I said I do not want to argue right before I go home for the day. I also said I will not work next or around to you tomm. He said that sounds fine. Then we kept arguing toe to toe. And I struck him in the chest with my head. Then Steve stepped over to us to break the two of us apart and then we all tried to calm down. I apologized and said I am going home. Last I saw it was 3:35 when I left.

Statements from eyewitnesses varied in details but were consistent regarding Claimant's head butt. The Carrier determined that the incident constituted a serious offense, warranting dismissal.

### **ORGANIZATION POSITION:**

The Organization objects that Claimant was prejudged when he came to the Investigation, having already been removed from service. It maintains Harris provoked the entire incident with his statement "You wouldn't believe what this asshole said about us." In the Organization's assessment, Claimant tried to descale the situation by repeatedly asking Harris to leave, and it was Harris who kept pushing and pushing until the exchange escalated. It concludes that the Carrier failed to take into consideration critical mitigating circumstances, and imposed far too harsh a penalty given the facts involved.

### **DECISION:**

We do not find that removal from service pending investigation constitutes prejudgment of the case. The allegations to be investigated were of physical violence. The Carrier has an obligation to keep its employees safe. Under the circumstances the removal from service did not constitute an abuse of discretion.

The record in this case establishes that both employees were shouting and gesturing at each other during the incident. While Claimant repeatedly told Harris to leave, he could just as easily have left himself. Telling someone else what to do is not necessarily perceived as calming, but can actually ramp up an exchange.

The record does show that Claimant faced verbal escalation. However, the physical aggression of a head butt into Harris' chest was plainly a significant escalation into physicality which could have led to an all-out fight. As such, it was reasonably perceived as a very serious offense.

The Carrier is responsible for the health and safety of its employees, and must take prompt and reasonable action to avoid the occurrence or re-occurrence of physical attacks and/or injury. As a result, the Carrier was not unreasonable in concluding that when Claimant resorted to physical attack during a verbal exchange, he became unemployable.

### **AWARD:**

The claim is denied.

Dated: November 25, 2020



Patricia T. Bittel, Neutral Member

***Zachary C. Voegel***

Zachary Voegel, Labor Member



Samantha Rogers, Carrier Member