

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 10-13-0311
Organization File No. C-13-D040-16

Claimant — Princeton Woods

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on May 3, 2013, when it issued Claimant, Princeton Woods, a Level S Combined Suspension with a three-year review period for violation of MOWOR 1.6 — Conduct, for failure to contribute to a productive work environment that is free from harassment and work place violence by his display of physical contact and verbal abuse toward another employee while working on the Red Rock Subdivision.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove the discipline from Claimant's record, and make him whole for losses incurred.

BACKGROUND:

The Claimant entered service with the Carrier on September 19, 2011. At the time of the incident that resulted in his discipline, he was working as a Machine Operator on a Mobile Gang.

After the morning job briefing on April 15, 2013, Claimant and several others went to get their personal protective equipment (PPE) from the fuel truck, which was assigned to Kent Winder. According to the Claimant, when he opened a box "the wrong way," Winder

got angry and began yelling and cursing at him, telling him to get away from his truck. Winder then put his hand on Claimant's chest "firmly" in an effort to get Claimant to leave. According to Winder, the Claimant was opening boxes and strewing the contents around willy-nilly. Winder asked him to stop, then asked him to use a step to reach boxes on the higher shelves. Claimant ignored Winder, who eventually put his hand on Claimant's chest in an effort to get him to back off and leave. At some point the two men left the truck and, followed by onlookers, continued to argue in loud voices as they sought out the Roadmaster, Otis Frazier. He observed what was going on, got the onlookers to leave, and then had a private conversation with the two men. They aired their grievances with each other, discussed the incident with Frazier, then went their separate ways and back to work.

The Claimant, Winder and the Roadmaster all thought that the matter had been resolved, but one of the bystanders telephoned the Carrier's hotline and reported the dispute. BNSF Special Agent Jerry Goodwin went to the site to investigate. Goodwin spoke to the Claimant and Winder and obtained statements from them. There had been physical contact when Winder placed his hand on Claimant's chest, but Goodwin concluded that the two men were not threats to each other or anyone else and that there was no workplace violence.

The Carrier sent Claimant and Winder a Notice of Investigation dated April 16, 2013, indicating that an investigation would be held "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to contribute to a productive work environment that is free from harassment and work place violence by your display of physical contact and verbal abuse on Monday April 15, 2013 at 1115 hours on the Red Rock Sub at South Burnett toward another employee." In addition, the two men were removed from work pending the outcome of the investigation.

Following a mutually agreed postponement, the hearing took place April 23, 2013. At the hearing, Goodwin testified regarding his conclusions from the investigation he conducted. Roadmaster Otis Frazier testified that the Claimant and Winder were "a little vocal"—very loud and aggressive—in reporting what had happened at the fuel truck. It was Frazier's opinion that the Claimant had not heard Winder when he tried to get Claimant's attention in the truck as Claimant rummaged through the gear in the truck, putting things in disarray. Frazier testified that he did not observe either man use any profanity or make any threats, but he did consider both parties' conduct to be aggressive. He did not witness any physical contact between the two men, nor, he testified, did he "think there was any concerns of uh, harm or physical issues that could have arisen." It was Frazier's opinion that the onlookers escalated matters between the principles and blew the incident out of proportion. Mr. Winder testified that the incident was a misunderstanding. He felt that the Claimant was ignoring his requests about handling things in the cabinet where they were

stored. The area is small and he placed his hand on Claimant's chest in an effort to put some distance between them. The Claimant's testimony mirrored that of the preceding witnesses. He admitted that he was not paying attention when Winder was trying to get his attention while he was trying to get supplies from the fuel truck. When Winder put his hand on Claimant's chest, the Claimant left and went to the Roadmaster. He did not feel threatened. The two of them used strong language, but nothing out of the ordinary for railroad workers. He himself made no physical contact with Winder. After he and Winder spoke to the Roadmaster, the matter was resolved to his satisfaction.

By letter dated May 3, 2013, the Claimant was informed that he was being assessed a Level S Combined Suspension for his "failure to contribute to a productive work environment that is free from harassment and work place violence by your display of physical contact and verbal abuse on Monday, April 15, 2013..." The combined suspension was 20 days' actual suspension from April 16, 2013, through May 5, 2013, and 10 days' record suspension. He was also placed on a three-year review period.

FINDINGS AND OPINION:

Public Law Board 7602, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein.

The Carrier found Claimant guilty of "fail[ing] to contribute to a productive work environment that is free from harassment and work place violence" due to his "display of physical contact and verbal abuse" toward Mr. Winder. It concluded that he had violated MOWOR 1.6 — Conduct, which reads:

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome
- or
7. Discourteous

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated.

The record establishes that the Claimant and Winder engaged in a contentious exchange when Claimant tried to obtain his PPE from the fuel truck assigned to Winder in a manner that Winder felt was causing disorder. To the extent that the two men were “quarrelsome,” the Claimant was in violation of MOWOR 1.6. However, the Carrier’s conclusions that Claimant had engaged in physical contact with Winder and that he had engaged in harassment and/or violence in the work place are simply incorrect and totally unsupported by the evidence in the record. Everyone who testified stated affirmatively that Claimant had not made physical contact with Winder. Not one individual who testified, including a BNSF Special Agent highly experienced in investigating harassment and violence, believed that the incident presented any issues of harassment or workplace violence. Two employees had a brief, heated exchange that was quickly defused. No one was harmed; no one felt threatened at any point. Why someone felt compelled to telephone the Carrier’s hot line will forever remain a mystery—at the same time, it is better to report and investigate possible instances of harassment or violence so that if there *is* a problem, it can be dealt with and resolved at the lowest level. At most, however, the record in this case only supports a finding that Claimant was guilty of a low level violation of MOWOR 1.6.

The penalty assessed was utterly disproportionate to the level of Claimant’s minor infraction of company policies. This incident was his first discipline. Under the Carrier’s Policy for Employee Performance Accountability (PEPA), it should have been treated as a first Standard violation, with a formal reprimand and a twelve-month review period. While the Carrier was exercising caution when it held Claimant off work while it investigated possible violence in the workplace, once it became clear that he was not guilty of any workplace violence and posed no threat to himself or others, the suspension should have been reversed and the Claimant reimbursed for lost wages during the period he was held out from work.

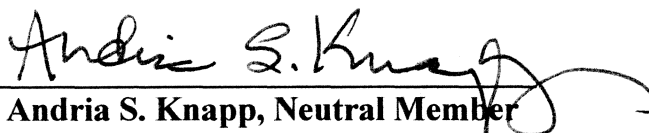
In summary, Claimant’s discipline shall be reduced to a first Standard violation. The Level S Combined Suspension on his record shall be removed and replaced with a formal reprimand and a one-year review period pursuant to the progression set forth in the PEPA. The Claimant shall be reimbursed for any lost wages or benefits incurred while he was held off work.

AWARD

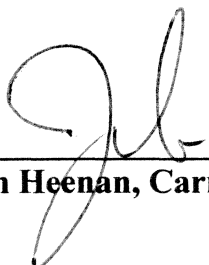
Claim sustained in accordance with the Findings.

ORDER

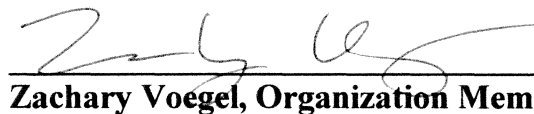
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Andria S. Knapp, Neutral Member



Joseph Heenan, Carrier Member



Zachary Voegel, Organization Member

5/25/2016

Date