

PUBLIC LAW BOARD NO. 7660  
CASE NO. 21

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY  
(former Chicago and Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The dismissal of Claimant J. Bradley for violation of the Union Pacific Workplace Violence Policy and GCOR 1.6 Conduct in connection with allegations that he made a threatening remark to his foreman was based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File J-1419C-501/1602011 CNW).

2. As a consequence of the violation referred to in Part 1 above, Claimant ‘... must be compensated all lost time, be made whole all losses including months of service credit with the Railroad Retirement Board, holiday pay, credit for days worked leading up to the holidays, days credited for insurance and have any reference to the investigation removed from his personnel record as outlined in Rule 19(d) of the effective Agreement.’”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and

that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, an 8 year employee, was working as an Assistant Foreman/Truck Driver headquartered in Highland Park, IL on February 7, 2014. A Notice of Investigation dated February 10, 2014 was issued on charges that on Friday, February 7, 2014, after a disagreement with his Foreman, Claimant made a remark that threatened his Foreman's well being. The February 21, 2014 Notice of Discipline finds Claimant guilty of the charges in violation of Rule 1.6 Conduct and the Work Place Violence Policy, and assesses him a Level 5 dismissal. The instant appeal resulted.

At the commencement of the February 14, 2014 Investigation, Vice Chairman Rankin made a procedural objection based upon the language of Rule 19(A), which provides, in relevant part, that Claimant and the Organization will be given reasonable (two working days) notice of the charges prior to the hearing. The Notice of Hearing is dated February 10, 2014, was delivered to Claimant at around 10:30 a.m. on February 11, and directed him to report for an Investigation to be held on February 14; the Organization did not receive its copy of the Notice until February 13 after Rankin had left the office. At the Investigation the Claimant admitted he received proper notice, but the Organization stated that the General Chairman had not yet received his copy of the charges, which the Organization asserted were not precise.

At the Investigation, both Foreman Griffin and the Claimant (as well as two welder witnesses to the exchange) testified as to their interaction on Friday, February 7, which forms the basis for the charge. According to all, Griffin and the Claimant got into a verbal disagreement about how they should deal with getting the tires of the truck looked at, with Griffin requesting Claimant to take it to the shop in Waukegan and Claimant saying that they should call first to find out if they had the tires they needed before

making the trip. According to the testimony and written statements of Griffin and Welders Johnson and McKee, at the end of the “argument,” Claimant said to Griffin “One of these days I’m going to be having a bad day (come in here in a bad mood) and you’re going to say something to me and it’s not going to be pretty for you (dude).” Griffin testified that he took what Claimant said as a threat to his well being, since he was aggressive, loud and hostile, and he felt that he could not say anything to Claimant because he did not know if it would set him off. Claimant testified that he asked Griffin “why do you always talk angry or be arrogant to me - sometimes people come in a bad mood - you never know what is going on. So what happens if somebody comes in a bad mood - then what next?”

Griffin called Manager Welling and told her he had a disagreement with Claimant and he threatened him, he was frustrated, and did not want to work with Claimant that day. He was told to leave Claimant at headquarters, and she would come and talk with him later that afternoon, which she did. Welling investigated with all four employees on Monday, and secured written statements confirming what Claimant said to Griffin. He was removed from service and Welling drafted the Investigation Notice informing him that he is alleged to have made statements that would violate the Workplace Violence Policy, of which Claimant is familiar. Griffin admitted that he has worked with Claimant for 10 months and they have a personality clash. Claimant testified that he felt that they did not want him at Highland Park Headquarters because he speaks up if he thinks something is wrong.

The Carrier argues that the Claimant was afforded a fair and impartial hearing, and that the Notice of Investigation met the Rule 19(A) requirements for being timely and specific, pointing out that the Claimant admitted receiving it 3 days prior to the hearing and the Organization failed to request a postponement due to its alleged non-timely receipt of the Notice. The Carrier contends that the statement made by the Claimant, and

heard by 3 witnesses, was a threat to his Foreman, who took it that way, and clearly violated the Workplace Violence Policy. It maintains that it cannot condone any threats of violence, and that such behavior warrants dismissal, citing Public Law Board 6621, Award 62. The Carrier notes that this is not the first time that the Claimant has been involved in a verbal altercation, having been returned to work under a leniency reinstatement agreement in May, 2012 with a 45 day suspension, 18 month probationary period, and Anger Management training. It contends that, despite the fact that the probationary period has passed, this opportunity to improve his behavior was obviously unsuccessful.

The Organization initially contends that the claim must be sustained on procedural grounds, since the Carrier violated the two working day notice, as well as the specificity, requirement contained in Rule 19(A). It asserts that the Carrier failed to meet its burden of proving a violation of the cited Rule and Policy in this case, since the Claimant's off-the-cuff statement was misinterpreted as being threatening by his Foreman, who admittedly did not like him, and the Claimant's action in turning and walking away to diffuse the situation militates against finding any improper intention in his comments. The Organization avers that there was no fight, only a verbal exchange and disagreement about how best to perform tire work on the truck, and the fact that it was the end of long work week hours when tempers were high on both sides must be taken into consideration in understanding the context of what took place. It insists that Griffin initially just reported the disagreement and the fact that he did not want to work with the Claimant that day, but later changed his story to add the alleged threat, undermining the seriousness of the statement or his claim to have felt threatened. It notes that the Claimant was no more quarrelsome than Griffin during the interchange. The Organization stresses that the Claimant is an 8 year employee with no active discipline on his record, is admittedly a hard worker, has never been in a fight at work, and has over 38 qualifications to help him

be a valuable asset to the Carrier, in contending that dismissal was an excessive penalty for a relatively minor comment, and should be removed or reduced.

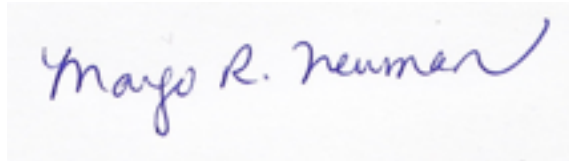
The Board concludes that the Carrier complied with Rule 19(A) with respect to serving timely and specific Notice of the charges to the Claimant. If the Organization felt that it needed additional time to prepare, when the Claimant had been properly notified, it could have requested a postponement, but did not do so in this case. With respect to the merits, Welling made clear that the Carrier was relying totally on the statement made by the Claimant to Griffin, and not the fact that they had a disagreement about how best to get the tires changed on the truck. On the basis of all of the evidence, the Board is of the opinion that the Carrier met its burden of proving that on February 7, 2014, the Claimant directed the following statement to Foreman Griffin at the conclusion of their disagreement - One day I'm going to come in here and be in a bad mood, and you're going to say something to me, and it's not going to be pretty for you.

There is no doubt that this statement could be interpreted as a veiled threat in violation of the Workplace Violence Policy, or as an expression of frustration with having to argue about everything, which apparently the Claimant and Griffin did. While the Carrier must be vigilant in providing a workplace free of harassment or violence, and cannot tolerate any form of threats of violence, the fact that the Claimant did not show any other sign of violent action when making the statement, and turned and walked away from the situation immediately, tends to negate an intention on his part to engage in violent or threatening behavior. This conclusion is buttressed by the fact that Griffin did not immediately report the Claimant's actions as a threat, only indicated that he did not wish to work with him for that day (and not in the future, which is the time period the statement was directed at), and all who heard the statement admitted never having seen the Claimant involved in a fight at work.

While the Claimant may not be easy to work or deal with, there are factors present that mitigate against the dismissal penalty in this case, including the fact that the Claimant's involvement in a previous threat incident was no longer active on his record, having passed the probationary period without incident, he is an admittedly hard working 8 year employee who has a lot to offer the Carrier, and he has not shown himself to have any propensity to violence. Under the circumstances of this case, the Board is of the opinion that the imposition of a dismissal was excessive, and that a lesser discipline is more appropriate to correct the Claimant's future conduct. Thus, we conclude that the Claimant shall be returned to work with full seniority and benefits, but with a time served suspension substituted in place of the dismissal. The Claimant shall receive no back pay in this case. He is cautioned to do whatever is necessary to obtain the skills he needs to deal with disagreements at work without resorting to verbal confrontations and potentially threatening comments.

AWARD:

The claim is sustained, in part, in accordance with the Findings.



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Margo R. Newman  
Neutral Chairperson

Dated: June 28, 2016



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member