

PUBLIC LAW BOARD NO. 7585

Case No. 8/Award No. 8
Carrier File No.: 10-12-0126
Organization File No.: C-12-D040-5
Claimant: R. Burkitt

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

FACTS:

On November 8, 2011, Roadmaster Alton Fry held a Safety and Job Briefing meeting attended by approximately 20 employees. Towards the end of the meeting he asked whether anyone had anything else to share with the group. Track Inspector Robert Burkitt began complaining about a "dumb broad" who had called him at home early in the morning. When Fry advised this was not an appropriate topic in front of the other employees, things became heated. Claimant Burkitt was given a 30-day Level S Actual Suspension from November 8 to December 7 with a one-year review period for violation of MOWOR 1.6: conduct creating an intimidating, offensive or hostile work environment.

CARRIER POSITION:

Claimant Burkitt used inappropriate language and behaved in an aggressive manner. There was no denial of a fair investigation. The incident was serious in nature and warrants the discipline levied, particularly in view of Claimant's extensive disciplinary history.

ORGANIZATION POSITION:

Claimant Burkitt may have used poorly chosen words, but he was raising an important issue about being paid for calls outside of assignment hours and that is the discussion Roadmaster was trying to shut down. The investigation was anything but impartial since the Conducting Officer was leading the witnesses and Claimant's personnel record was never provided during the hearing. The suspension was excessive and without merit. Claimant did exactly what Fry wanted him to do; he left. MOWOR 1.6 was never introduced as an exhibit and the evidence does not establish a violation.

DECISION:

The conduct of the hearing fell within the bounds of an investigation. Roadmaster Alton Fry and Assistant Roadmaster Jeremy Holton both testified to Claimant's use of the phrase "stupid broad" and his inflamed response when Fry attempted to have him drop the subject. Statements by Martin Smyth, Jake Yancey, Cody Wagner and Ryan Akers all confirmed that the confrontation between Fry and Claimant Burkitt became heated. Yard Maintainer David Radak testified on Claimant's behalf, and characterized Fry as the reactive party. A careful reading of the transcript has persuaded the Board that Claimant did engage in prohibited conduct. Though there is room for a difference of opinion, Management was within its rights to perceive and characterize Claimant's choice of words as offensive and to conclude that his behavior was improperly aggressive. Claimant failed to drop the subject upon request from supervision, and instead of dropping the controversy inflamed it by escalating his responses and elevating his tone of voice. Though Fry also used an elevated tone of voice, there is no evidence that he either provoked Burkitt or acted in a way that was anything but responsive and an attempt to terminate the exchange. It follows that Burkitt violated MOWOR 1.6 by speaking in an offensive manner.

The Carrier has stated that the particular discipline invoked was appropriate in view of Claimant's personal record. That record shows 33 years of employment with four formal reprimands, one conditional suspension, four record suspensions waived, four actual suspensions waived and five actual suspensions invoked. This record establishes a continuum of offenses that supports invocation of a higher level of discipline than would otherwise be the case.

The Organization protests that the personal record was not included in the documentation during the investigation. However, the Organization did not protest this lapse during the investigation, nor did it request a postponement until the record could be made complete. There has been no showing of prejudice.

AWARD:

The claim is denied.

March 18; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member