

Public Law Board 6485

Parties to Dispute

United Transportation Union)
Yardmasters Department)
)
vs) **Case 1/Award 1**
)
Burlington Northern Santa Fe Railroad)

Statement of Claim

Claim for full record clearance for yardmaster John McAlpine in conjunction with an investigation held on March 13, 2001. This claim is for all time lost, full health benefits, and vacation credits.

Background

The Claimant to this case, John McAlpine, was advised on February 23, 2001 to attend an investigation in order to determine facts and place responsibility, if any, in connection with conduct unbecoming a BNSF employee while on duty as a yardmaster on the date of February 22, 2001. He was also advised that he was being held out of service "...pending results of (an) investigation...". After a number of postponements an investigation was held on March 13, 2001. It was held at the Carrier's Terminal Conference Room at Balmer Yard in Seattle, Washington. After the investigation the Claimant was advised on March 26, 2001 that he had been found guilty of violation of Carrier's Rules 1.1.3,¹ 1.6 and 1.7. He was assessed a thirty-three (33) day actual suspension and was restricted "...to work as communication yardmaster only at Interbay,

¹Incorrectly cited as Rule 1.13 in the original notice to the Claimant.

Washington...".² He was also put on a three (3) year probation. This discipline was appealed by the Organization in the proper manner under Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

Discussion

The Claimant to this case, John McAlpine, was covering his assignment as yardmaster on February 22, 2001 at the Carrier's Balmer yard facility in Seattle,³ Washington when at approximately 2:00 PM, as he was just starting his shift, he engaged in alleged behavior which Carrier's supervision found to be objectionable. According to the notice of investigation which was sent to him on the day following the alleged incidents, Mr. McAlpine was charged with "...alleged quarrelsome, discourteous conduct, and (with engaging in an) altercation when yelling at company employees...while in the yardmaster's and terminal manager's office...". The Claimant subsequently went home about a half hour into his February 22, 2001 shift after these alleged incidents took place and he remained off until he was assessed discipline by the Carrier on March 26, 2001. The Claimant's suspension was continued through the following day of March 27, 2001

²Employees' Exhibit F (also Carrier's Exhibit 3 in the record).

³This Carrier has three yards in Seattle which are Stacy yard, south Seattle yard and Balmer yard. The incident under review in this case took place in the latter yard.

after which he was instructed to mark up under the restrictions contained in his letter of discipline. The length of time the Claimant was out of service was from February 22, 2001, when he was suspended pending an investigation, through March 27, 2001. This window period amounted to the thirty-three (33) days he was suspended by the Carrier.

The Carrier's rules cited in this case are the following which are quoted here in pertinent part.

Rule 1.1.3

Employees will report to and comply with instructions from supervisors who have proper jurisdiction. Employees will comply with the instructions issued by managers of various departments when the instructions apply to their duties.

Rule 1.6

Employees must not be:

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

Rule 1.7

Employees must not enter into altercations with each other, play practical jokes or wrestle while on duty or on railroad property.

There is testimony at the investigation by Travis Anderson, who states he is a yardmaster who was filling in as a bootleg trainmaster on and off for a number of years prior to the date of February 22, 2001. Mr. Anderson states that he was assigned to work

as an acting trainmaster on that date to oversee the operations of both the yard and the terminal at the Seattle facility where the incidents under scrutiny in this case allegedly took place. According to this witness he came into the yardmaster's office at about 2:00 PM from the grain yard. This was shortly after the Claimant started his tour of duty. Anderson testified that when he came into the yardmasters' office he observed the Claimant on the phone with the dispatcher. They were discussing an inbound grain train. Mr. Anderson testified that at that point, when the Claimant hung up the phone, he asked him what the grain train's hours of service were. According to this witness the Claimant did not answer this question but in turn asked Anderson if they had an extra switch engine. Anderson says he answered in the negative and he then observed that the Claimant was a "...little upset...". At this point Anderson testified that he felt like the Claimant was "...getting mad at (him) because there wasn't an extra switch (to be) called and there was a lot of stuff going on at the time...". According to this witness he felt that the Claimant was getting "...madder..." and he asked the Claimant to be civil to him. He states that he still had not gotten information from the Claimant about the hours of service of the grain train. Anderson testified that he thought that things were then "...getting a little out of hand...". So Anderson went to talk with the terminal manager who was Ron Linnane. Linnane told Anderson that more information was needed on why the Claimant wanted an extra switch for the grain train. Mr. Linnane instructed Anderson to solicit this information from the Claimant. When Anderson went back to the Claimant and asked him why he needed the extra switch Anderson states that the Claimant told him, at that point,

that he was being harassed and that he was "...going to go home stressed...". Anderson states that he then advised the Claimant that this might be a good idea since "...we didn't want him there if he was...not able to do his work...". At that point the Claimant then proceeded to go to the terminal manager's office. Shortly thereafter acting trainmaster Anderson also went to the manager's office. Anderson states that he heard the Claimant tell the terminal manager that Anderson had been harassing him and that he was going home sick "...or stressed...". According to this witness the manager told the Claimant that he should go home. According to Anderson the Claimant then called the 800 number and complained about various matters. He then left the company's premises. Anderson filled in at the yardmaster desk for the Claimant until a relief was brought in. Anderson also states that when he asked the Claimant why he needed an extra switch the Claimant talked to him in a pejorative manner and that he called him a "stupid bastard", a "yardmaster flunky", and said that Anderson was "brain dead". According to this witness it was unclear to him why the Claimant thought he was being harassed by him. He states that he went "...out of his way to be nice..." to the Claimant even though the Claimant was being "...rude..." to him. According to this witness, although he observed that the Claimant was upset, he never felt "...threatened..." by the Claimant.

On cross-examination Anderson states that the traffic flow at Balmer Yard had been extremely high and that this did create high levels of stress among employees working there. This was primarily due to an increase in the Carrier's grain business. This witness also testified that the most stressful time of the day for a yardmaster was the first

hour or two of their assignment. When asked his opinion of how people working at the location were handling the stress he responds that in his view "...everybody handles stress different(ly)...".

There was testimony at the investigation by Victoria Redmond, communication yardmaster at Balmer yard. This witness was finishing her shift as yardmaster on the date of February 22, 2001 when the Claimant was starting his. She testified that the Claimant got upset about a couple garbage cars which should have been moved and taken care, according to him, by the preceding shift and that this had not been done. The desk yardmaster told the Claimant that there was no room in the yard to have moved these cars and according to Redmond the Claimant appeared to have had difficulty understanding this explanation. According to her the Claimant appeared to be getting upset. She said she told the Claimant to "...just calm down, John...it's not worth getting upset (about)..." but she was not sure he heard her. She states that the Claimant's voice appeared to have been raised a couple "...octaves..." in his communication with others on this morning and that whatever attempts she made to calm him down were not successful. She states that she did not know why she was not successful. She states that she did not think that the Claimant's behavior was acceptable and that she was somewhat upset that it was taking place in her presence. She adds that it was, however, "...not like (things which) she had not heard...before...". This witness testified that the train yard had been very busy prior to the date in question, and that the stress levels on all jobs had been up. She states that she had seen other yardmasters, besides the Claimant, upset during the time she had worked

at Balmer yard. In her view stress levels at the yard had "...gotten to..." a number of people of whom the Claimant was one. With respect to language used by the Claimant on the morning in question, this witness states that she was offended when the Claimant called a switch foreman, in her presence, a "...little lazy SOB...". She also states that there are a "...lot of people that (she) works with (who) talk on that level...".

Testimony by terminal manager Ron Linnane is that the Claimant came to the doorway of his office at about 2:10 PM on February 22, 2001 in a "...highly agitated state...". According to Linnane the Claimant told him that Mr. Anderson had been harassing him, that he was looking "...over his shoulder every five minutes...", and that Anderson "...was driving him crazy...". According to Linnane the Claimant told him that if the manager did not get Anderson away from him he was "...going home stressed...". The manager testified that he agreed with the Claimant on this latter point and that he told him that he should go home. So the Claimant called the 800 number employee help line, talked at some length, and then left the property. According to this witness the crux of the whole set of differences between between the Claimant and Anderson centered on the extra switch engine discussed earlier which the Claimant thought was needed in the yard. This manager testified that he did not think that the Claimant was out of control on the morning of February 22, 2001. According to the manager it was his view that "...when the Claimant stated that he was going home stressed (he) made the decision that that's exactly what he should probably do...". He states that he did not think that the Claimant could "...continue to perform his job effectively..." at that time and that "...in a way..." he

was concerned about the Claimant's health, as well as the "...welfare of the whole operation and all the people involved...". After the Claimant made the 800 number call he returned to ask the manager if he wanted the Claimant to stay on the job until a replacement was found. The response by that manager was that it would be best for the Claimant to go home. The manager also states that he felt like there was an "...unhealthy thing going...(on) and we needed to end it...". So he relieved the Claimant from duty as a yardmaster. The manager admits that the yard in question had been "...very stressful lately...".

Testimony by yardmaster Timothy Ocain who was working Balmer yard on the date of February 22, 2001 is that he and the Claimant did have a disagreement about what to do with some of the cars in the yard that morning when the Claimant came in to start his shift but this yardmaster states that nothing happened which "...really...offended..." him. Testimony here is that it was "...more than stressful..." working the yardmaster position in this yard. According to this witness it got to the "...point of causing physical illness and/or mental illness..." to some of the employees. According to Ocain the situation had gotten "...worse recently...". It was his view that because of the volume of traffic, conditions in the yard had been at "...peak stress the last month or two..." prior to the incidents of February 22, 2001. With respect to what the Claimant said during the first half hour or so of his shift that day this yardmaster states that he did not specifically hear the Claimant use vulgarities when speaking about the switch foreman but he did remember that the foreman's name was brought up in a way which was not good. This

witness also states that he had worked with the Claimant for an extended period of time. This witness admits that the Claimant was yelling during the time under scrutiny here, but it is his view that the Claimant is a little louder than most people in any case. This witness states that because of the stress level in the yard he himself had "...blow up..." on occasions and it is his view that "...everybody...has had their times..." in the yard recently. This witness intimates that he does not find it easy to work under such stressful conditions.

Testimony by extra board yardmaster John Pearsall was that on the day of February 22, 2001 he came to work to relieve yardmaster Redmond at Balmer yard. When he went to the yardmaster's office he saw the Claimant and Travis Anderson together in the room. He states that he heard the two of them talking about an extra switch engine. He states that he did hear the Claimant raise his voice and that some foul language was used. He states that he does not find this, in itself, objectionable although he agrees that it is not proper. But, according to this witness, such language is "...used quite a bit..." on the job in this yard. He states that in his view the Claimant was being quarrelsome with acting trainmaster Anderson. He states that it is quite stressful working at this yard and that things have been "...going in a downhill spiral..." lately.

Testimony by the Claimant at the investigation is that he did complain to Mr. Linnane on February 22, 2001 about Mr. Anderson's harassing behavior toward him. According to the Claimant Mr. Anderson would not let him get his work done because Anderson was continually interrupting him. He states that after he called the 800 hotline

he tried to arrange a meeting with the superintendent in order to get to the bottom of what was happening. But no meeting was scheduled. He states that he even volunteered to stay at work until a replacement was found but that Mr. Linnane told him to go home.

According to the Claimant he knew on the day in question that he had to get authority from the terminal manager to call up an extra engine. But he did not believe that he had to get any authority to do such thing from Mr. Anderson, the acting trainmaster, because in his estimation Anderson was not exempt, did not have such authority, and was simply what he calls a roving yardmaster. He states that he did not call the switch foreman a vulgar term but he was upset by the fact that certain cars were supposed to have been moved by him and had not been done so. The Claimant states that he was not angry by what was going on the day of February 22, 2001 but he was discouraged and "...disheartened..." because of what he calls the "...hopeless situation..." of the train yard with inbound trains coming in, trains to build, and not enough room in the yard for all of this traffic. So in his mind it was imperative that he have at his disposal an extra switch engine. He states that he did not call Mr. Anderson a flunky yardmaster nor a stupid bastard. He stated that he did have an exchange of words with Mr. Anderson and that the latter told him that he was "...ten times the yardmaster..." that the Claimant was. He states that he responded that Anderson did not have "...even sense enough to call an extra..." switch. The Claimant states that he was not yelling at anyone on the day in question. He does admit, however, that he is "loud" because his voice is "...normally loud...". He admits that he was "stressed" and "...demoralized from coming into these miserable

situations every day after day...". The Claimant states that he develops a muscle strain in his back from stress which "...burns like crazy and goes on for hours...".

With respect to the harassment issue the Claimant states that on the day in question Mr. Anderson was hounding him and he kept asking him what he wanted and all he kept saying was that he wanted the Claimant to talk to him civilly. So unable to ignore Mr. Anderson any more the Claimant states that he finally just got up and went to the terminal manager's office and asked the latter to tell Anderson to stop harassing him. According to the Claimant the stress level at the yard had been increasing because the Carrier is understaffed and the amount of grain hauled had increased. On the day in question the Claimant states that he had more trains than tracks to handle them. The Claimant also states that some of what was interpreted on the day of February 22, 2001 as angry words between he and yardmaster Ocain was, in fact, just facetious horseplay.

Findings

A review of the full record in this case leads the Board to the following conclusions.

There was testimony from all of the witnesses at the investigation that Balmer yard in Seattle was a stressful place to work at in February of 2001. According to some of the witnesses the level of work was escalating because of staffing problems and because of the high level of, and continuing escalation of, the Carrier's grain business. Testimony to

this effect is not disputed in the record.

There was also testimony that some of the Carrier's other employees working at Balmer yard, in addition to the Claimant, were suffering the effects of the increased stress. Although no specifics were given in any of the testimony of exactly who these other employees were it was never denied that this was going on. The terminal manager himself admitted that Balmer was a stressful place to work.

The sole issue in this case is whether the Claimant dealt with this stress in such a manner that he violated Carrier's rules by his behavior. Does the evidence point to the fact that the Claimant was quarrelsome and discourteous on the date of February 22, 2001 and that he entered into an altercation with another employee on that same date as he is charged with doing in violation of Carrier's Rules 1.6 and 1.7?

The main witness against the Claimant, who allegedly suffered the brunt of his quarrelsome and discourteous behavior, was fellow yardmaster Anderson who was holding down the position of acting trainmaster on the day in question. According to Anderson the Claimant stated some impolite things to him indeed by calling him stupid, brain-dead and a poor excuse of a yardmaster. Although the Claimant admits that he had a booming voice and tends to be louder than others he denies that he said these things to Anderson. Unfortunately for the Claimant other witnesses at the investigation, among them fellow yardmaster Redmond, pretty much corroborates Anderson's version of what happened. The Claimant did speak in a discourteous manner to Anderson and according to Redmond she even told him to calm down which apparently had no effect on the

Claimant.

The Claimant states that Anderson was harassing him. According to the Claimant this meant that Anderson just kept asking him inane questions, was getting in his way, and generally getting on his nerves when the Claimant was trying to get his day started. The Claimant also states that somewhere along the line in his communications with Anderson on the morning of February 22, 2001 Anderson told him that he was a better yardmaster than the Claimant. Anderson is not questioned on this latter point on recall at the investigation. If he did say this it was obviously a fairly discourteous rebuttal to what the Claimant was saying to Anderson.

Anderson testifies that he was attempting to solicit information about why the Claimant needed an extra switch on the day in question and that the Claimant was abusive to him.

It is fairly clear from the record that much of the harassment which the Claimant states that he felt that Anderson was directing toward him came from the Claimant's own lack of respect for Anderson's factual supervisory authority, which the Claimant chose to believe did not exist, while Anderson held the position as acting trainmaster, On this point the Claimant is at odds with the provisions of the labor agreements under which he works. Rule 29 of the parties' Blue Book Agreement clearly gives the Carrier authority to appoint members of the yardmaster craft to relieve a trainmaster and to pay such

yardmasters a supplement for assuming this authority.⁴ This Agreement does not say that yardmasters, when receiving these appointments, lose their yardmaster or their covered status. From some of his testimony at the investigation it also appears that a sore point with the Claimant is that when yardmasters are appointed to acting trainmaster positions they are not done so by the Carrier in accordance with yardmaster seniority. The Board has not been shown any language which requires the Carrier to follow seniority in making these appointments despite what the Claimant may personally believe about this issue. The language negotiated by the parties in the old Blue Book Agreement was obviously meant, among other things, to permit the Carrier to put certain yardmasters in a training position so that they might be better suited, at some future point, to be promoted to the position of trainmaster. It is fairly clear that the Claimant did not like Anderson, did not respect his authority, and did not agree with the fact that Anderson, and not some more senior yardmaster, had been appointed to an acting trainmaster position. On all of these points the Claimant simply allowed his personal views to get the best of him even when some of these views were in contravention of the Carrier's and the Claimant's fellow yardmasters' contractual rights.

There can be little doubt that the Claimant to this case has vast experience as a railroad man working over 25 years for BNSF and its predecessor railroads. He relates in his testimony the many different positions he has held while employed at this Carrier,

⁴See Trans. @ p. 88. The language used there is "...a general yardmaster not covered by the scope of this agreement..." which is an exempt employee which the Board can but assume refers to a trainmaster.

which included working as a clerk, as a dispatcher, and for the last ten years as a yardmaster.

Such vast experience, however, cannot relieve the Claimant of the obligation to understand his labor contract, which he clearly chooses to interpret the way he personally sees fit, irrespective of the clear and unambiguous language contained in the governing agreement. Nor does this vast experience relieve the Claimant of the obligation of being polite and courteous to his fellow workers, including members of his craft who might receive appointments to positions of authority albeit they might be younger than the Claimant.

All evidence of record suggests that the environment in which the Claimant worked was a very stressful one. But both the Claimant and all of his fellow workers had to equally deal with this. In today's work environment many people have to deal with stress, not only in this industry but in many others. This does not give employees the right to be abusive. The manner in which the Claimant reacted to the stress of his job on the date of February 22, 2001 was improper, and for that he deserves to be called to task so that he does not get the impression that such behavior is appropriate. It is not. The Claimant violated Rules 1.6 and 1.7 of Carrier's policy by his behavior.

On the other hand, there are sufficient extenuating circumstances in this case to warrant conclusion that the level of discipline assessed was considerably beyond that called for and the Board will rule accordingly.

It is unclear if the Claimant went home on his own because of his feelings of stress

on the date of February 22, 2001, whether he was sent home by the terminal manager, or whether it was a combination of the two. The Claimant's suspension of thirty-three (33) days was measured from the day he went home "...stressed..." until the day after he was issued the letter of discipline. There is no rationale in the record for the arbitrary choice of the starting and ending date of the Claimant's suspension and the Board has duly taken this under advisement. As a matter of logic, the Claimant himself may have curiously chosen the starting date of his suspension if, indeed, he went home of his own free choice on the date of February 22, 2001.

Ruling by the Board is that the Claimant's suspension shall be reduced, in view of the full record in this case, to a five (5) day suspension. The Claimant shall be paid for all of the other days held out of service, at the appropriate rate, from February 22, 2001 until March 27, 2001. The remaining time of Claimant's three (3) year probationary period, which the Board interprets to have started also on February 22, 2001, shall be discontinued at the time of the implementation of this Award. In accordance with this Award the Claimant shall contact the Carrier's EAP department and meet with a counselor in that department. Upon notification by that department to supervision, by means of a letter to that effect, that it is appropriate for the Claimant to exercise seniority in accordance with his labor Agreement as a yardmaster, any and all work restrictions placed on the Claimant by the Carrier when it issued discipline, shall be lifted. Until such letter is received the Claimant shall remain working in accordance with the restriction imposed on March 26, 2001. The Claimant's personal record shall be amended in

accordance with these Findings.

Award

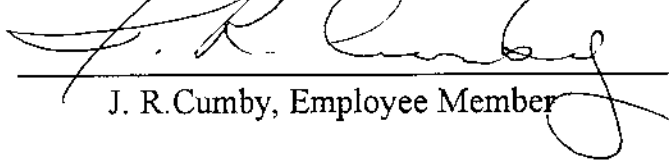
The claim is sustained in accordance with the Findings. Implementation of this Award shall be within thirty (30) days of its date.



Edward L. Suntrup, Chairman & Neutral Member



G. L. Shire, Carrier Member



J. R. Cumby, Employee Member

Date: 9-5-2002