

PUBLIC LAW BOARD NO 7026

AWARD NO. 10
CASE NO. 10

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM

Claim of California Division Conductor C. M. Davis for removal of a Level S thirty day record suspension from his personal record and pay for any time lost without deduction of any outside earnings.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Conductor C. M. Davis hereinafter referred as the Claimant was instructed to attend a formal investigation as follows In pertinent part:

“You are hereby notified to attend formal investigation in the Superintendent’s Conference Room, at 1501 F Street, Bakersfield, California, at 1000 hours on Tuesday, August 23, 2005, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged harassing, disrupting, intimidating and offensive actions leading to a possible hostile work environment and your alleged violence or threats of violence while crew members on the H EVEBAR926 on July 30, 2005 at approximately 2300 hours; in possible violation of Rules 1.2.7 (Furnishing information), 1.6 (6) (Quarrelsome) and 1.7 (Altercations) of the General Code of Operating Rules Fifth Edition in effect April 3, 2005 and HR – 90.2 (Workplace Harassment Policy) effective January 1, 1982 and revised December 1, 2003 and HR – 90.4 (Violence in the Workplace) effective August 1, 1995 and revised September 26, 2003.”

The hearing involved four BNSF employees charged with what amounts to inappropriate behavior in their conduct with each other. Conductor C. F. Lawrence and Engineer D. A. Madden brought Train H EVEBAR926 to the exchange point which would effectively conclude their responsibility for the Train. The Claimant and Engineer B. L. Rogers were waiting for the train's arrival in the Carrier furnished transportation van and on arrival they used the van to take them to the rear of the train to check the D P power. They advised the inbound crew of this which was acknowledged by their stating that they were set and centered. (air set on train and reverse lever centered). Subsequent to a delay of approximately twenty minutes Conductor Lawrence contacted the Claimant and Engineer Rogers via radio ending his comments with you should check the units on your own time. Engineer Rogers states that he also added "get up here now."

When the van arrived at the head end we have different stories about the employees conduct. Engineer Rogers says she was angry and didn't need to be told how to do her job. The Claimant says that Conductor Lawrence threatened him, used foul language and stated if he reported his conduct to the Carrier he would kill him. Conductor Lawrence stated that he was confronted by the Claimant who cursed him. He further states that he was just trying to help by taking a case of water from him and placing it on the engine platform, even asking him if he needed help with the rest of his luggage.

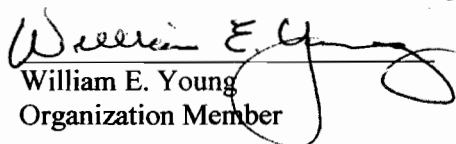
OPINION OF THE BOARD:

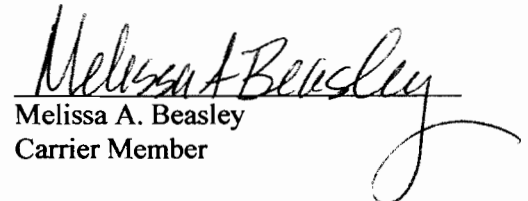
Taking a reasonable view of the testimony of the four principles it appears that the injured feelings started when the Conductor Lawrence tried to hurry up the out bound crew in checking the D P units at the rear of the train. His comment do it on your own time infers that his waiting for transportation to the tie up point was unnecessary. The fact is that the outbound crew needed the van for transportation to and from the rear end of the train. The confrontation escalated when the van arrived at the head end and Engineer Rogers had some choice words which were not directed to anyone in particular but generally inflammatory. We have a record given by the two conductors, the problem is one would think they were talking about separate incidents. The statement given by the Conductor Lawrence seems rather bland and very self serving. The remarks made by the Claimant while benign in content only helped to escalate the confrontation.

The Board holds that there were no procedural errors by the Carrier in time limit compliance nor in the conduct of the hearing and that the discipline assessed was justified.

AWARD: Claim Denied.


John L. Easley, Chairman


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member