

PUBLIC LAW BOARD NO 7026

AWARD NO. 11
CASE NO. 11

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 South West Division Conductor R. L. Diehl for removal of a Level S thirty day suspension from his personal record and pay for all 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 Diehl hereinafter referred to as the Claimant was instructed to attend a formal investigation as follows in pertinent part:

“Attend formal investigation at the BNSF Mobest Conference Room, 707 North 20th. Avenue, Phoenix Arizona, on Thursday, September 1, 2005, at 10:00 A. M. (MDST), with your representative and witness(es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.3.1, 1.3.3, 1.6 and 1.7 of the General Code of Operating rules, Fifth Edition, effective April 3, 2005, as supplemented or amended, and Southwest Division General Notice No. 2, effective October 25, 2004, concerning your alleged inappropriate conduct and altercation while on duty at approximately 3:50 P. M., August 23, 2005 at east end Mobest Yard.”

The Claimant was in charge of the R-SWE0037 road switcher assisted by Brakeman S. D. Nolan approximately one hour and fifteen minutes into the shift they got into a verbal altercation.

The Claimant was on the engine when Brakeman Nolan radioed him asking if he was going to be working himself with no help. The Claimant responded that he was to ride the point down and make a joint and that they were going to get off of the road crossing. Once the joint was made the Claimant got down from the engine to confront Brakeman Nolan. Brakeman Nolan states that the Claimant blocked his movement towards the engine with a forearm then poked him in the chest criticizing his comments over the radio. The Claimant states that he never touched Brakeman Nolan but was upset over the radio transmissions.

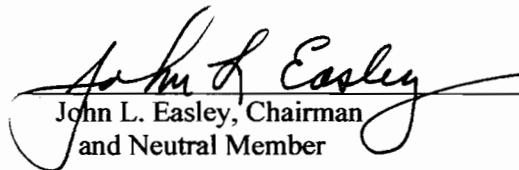
OPINION OF THE BOARD:

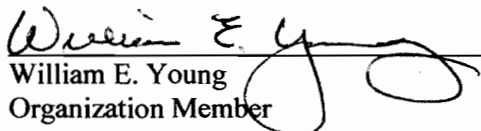
In response to the Organizations allegations of procedural defects by the Carrier, the Board finds none.

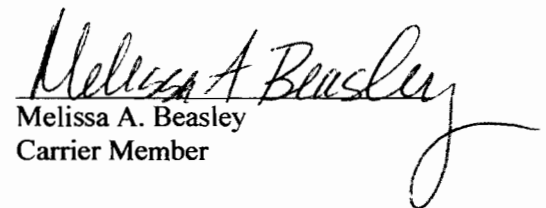
The comments made on the radio by Brakeman Nolan were uncalled for and precipitated the incident, however the Claimant is the one who got down from the engine and in th3 face of Brakeman Nolan. Regardless of the verbiage his actions can only be considered as a threat. The discipline assessed was warranted and will not be modified.

AWEARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member