

The conduct at issue is alleged to have occurred at approximately 4:55 PM on August 30, 2018, while Claimant was assigned as an Electrician on the second shift at the Enola Diesel Shop. According to the testimony of Charging Officer Johnson, on that date Assistant Manager Shapach was required to remove an offensive posting from the bulletin board at the head of 5 track, which he then brought to Johnson. Overlaid on the bottom of a supervisory bulletin entitled “Security Cameras,” a handwritten note in black ink stated, “gotta be able to perv on the Locker-Room entrance” followed by three exclamation points. Additionally, the bulletin language reference to “discipline world” was underlined and an arrow was inserted from that text pointing to the bottom of the bulletin, where the words “as opposed to the productive world” appeared in handwritten ink.¹

In the course of Carrier’s investigation, wide-ranging relevant evidence was received, including security camera video footage; extensive discussion of Claimant’s handwriting samples, its distinctive characteristics and its resemblance to the writing in question; statements submitted by others viewing the handwritten comments; and Claimant’s denials of posting the writing in question. At the conclusion of the hearing, Carrier’s Hearing Officer determined that the evidence supported a finding of guilt.

As reaffirmed by several prior Awards cited by Carrier in support of its action, this Board is not a tribunal of original jurisdiction. The governing Agreement and external law allow Norfolk Southern to deal with the dispute at the initial trial level, a process allowing its hearing officer to observe witnesses and exercise broad decision-making flexibility. The role of the Board is quasi-appellate. When challenges are raised to Carrier’s conclusions, the Board reviews the hearing, ascertains compliance with the contract, seeks to enforce its terms and ensures that decisions such as this termination are based upon reliable evidence and not arbitrary or capricious.

Although there appears to be some mild deflection in at least one Claimant Clements’ responses to questions proffered during the investigation, for the most part he flatly denies posting any inappropriate material on the shop bulletin board. Thus, his statement of

¹ Interviewed along with other co-workers at the time of the incident, Electrician Jonathan Eure admitted that when he viewed the bulletin someone had written comments in the main body of the text and he added the comments of his own at the bottom of the page “as opposed to the productive world.” Carrier’s video footage depicts that action. The record is silent with respect to discipline, if any, assessed.

August 30 declares, “I did not write anything on the print out.” Rather, he states during his interview that he simply printed out an email from Pat Johnson and posted it “so that employees who didn’t check their email could see the email and have a chance to read it. I did not remove my name from the top only so as to not become a target among the other men in the shop.” Later that same day Claimant responded to a follow-up question and denied that there was any writing on the bulletin when he posted it.

Carrier’s evidence, however, suggested that based upon the surveillance video footage it reviewed there were ample grounds for believing Claimant was engaged in behavior he recognized was inappropriate. Briefly summarized, the camera above the shop door captured Mr. Clements first approaching the bulletin board with paper in hand and, upon observing two managers approaching him, stuffing the paper under his locomotive packet, and turning around to walk back towards his computer station. Approximately five minutes later, according to Carrier “when the coast was clear,” he can be seen returning to the bulletin, taking thumbtacks, posting the bulletin and walking away with nothing in his hands.

Carrier determined that it is not required to tolerate employees displaying material it considered disparaging, divisive in nature and offensive to its team. Nobody here quarrels with those basics: it is not too much to ask personnel to adhere to reasonable standards of mutual respect. In this instance, Carrier’s case in part relies on compelling evidence relating to handwriting as well as with respect to the timing of his actions when considered in context with when other employees viewed the bulletin over the course of the next 25 minutes. Accordingly, while there arguably may be room to plausibly assert Carrier’s proof on the posting issue is circumstantial and not persuasive, no such uncertainty surrounds its second charge.

In addition to posting the printout, Carrier has charged the Claimant with being dishonest in responding to its inquiry. Those charges are conclusively established. Initially confronted by supervision about the posting, Claimant insisted there was nothing written on it when he posted it. His testimony on the point at hearing was initially evasive, but upon further questioning he represented that another employee had written the comments in the text of the bulletin, which he posted.

OPINION AND AWARD

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Lack of honesty in this context is among the most serious of all industrial offenses. Under the circumstances, dismissal on those grounds was neither arbitrary nor inappropriate. Nor is Claimant's service record helpful to his cause. Entries on that record include, among four earlier Serious violations, recent Serious charges assessed for excessive absenteeism; a 30-day actual suspension for Conduct Unbecoming to a supervisor; and a Letter of Counseling a month prior to these events for Unprofessional Conduct. Carrier's contentions that despite repeated leniency extended in the past, Claimant has continued to push the limits of acceptable behavior appear to accurately evaluate matters.

A W A R D

The Claim is denied.


Tom Owens
Employee Member


James E. Conway
Chairman and Neutral Member

 02/11/2020
Tara Arnett
Carrier Member

Dated: January , 2020