

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS

-and-

NORFOLK SOUTHERN RAILWAY  
COMPANY

AWARD

Case No. 151

Claimant J. M. Woodward

STATEMENT OF CLAIM:

"Claim on behalf of Electrician J. M. Woodward to be returned to service and to be made whole after being dismissed by letter dated April 22, 2015."

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Claimant Woodward was dismissed from service on April 22, 2015, after Carrier concluded following formal investigation held on April 2, 2015 that he had worked without proper fall protection and thereafter clearly implied he might claim a job injury if disciplined for the safety violation. For the reasons that follow the Board will deny the claim.

According to this record, on March 12, 2015, Assistant Shop Manager M. L. Weirich had observed the Claimant working on a locomotive headlight on unit NS 8385 from the top of the short nose. Weirich approached and inquired what Claimant was working on. Claimant indicated he'd been renewing the headlight gasket. According to Weirich, he then asked him if he had fall protection and Claimant admitted he did not. Weirich reminded him that fall protection was required when working on the high short noses, and Claimant acknowledged the reminder. When Weirich informed Claimant that he would be looking at "additional handling" of the incident, he describes Claimant's reaction as follows:

"Mr. Woodward became agitated and asked what're you talking about, START? I already had a START hanging over my head. I said I will see and get back to you. He continued, other guys go up on the nose without fall protection. Some guys even go on the roof without fall protection. He stated at that point I was walking by a unit on 4 track while they were welding and got burned on my neck. I asked Mr. Woodward if he was reporting an injury. He stated it depends, are we going to START with this issue..."

In the midst of this discussion, the record indicates Senior General Foreman Tom Hayden approached Weirich and Claimant, attracted by Mr. Woodward's "elevating voice level." According to Weirich, "I again asked Mr. Woodward, in the presence of Mr. Hayden, if he was reporting an injury. He stated it depends on how this is going to be handled."

According to Weirich, he then met with both Shop Manager Ernie McClelland and Mr. Hayden. McClelland indicated he'd just spoken to Claimant, who admitted he had not been injured but was concerned about going on START and spending more "time on the street." Claimant's contemporaneous written statement said simply:

"I was changing a headlight gasket on the 8385. Right front HL gasket was missing. I was without fall protection."

Tom Hayden's contemporaneous statement reads in part:

"As I got closer, I heard Assistant Shop Manager Mike Weirich say, 'Are you reporting an injury to me?' Electrician John Woodward replied, 'It depends on how you are going to handle the situation.'"

Ernie McClelland's contemporaneous statement reads in part:

"When I asked Mr. Woodward if he was injured he was not forthcoming and honest with his answer as he stated depending if I get START...I explained to Mr. Woodward that injury reporting does not relieve him of other discipline and both issues will be addressed...I then asked Mr. Woodward was there an incident and was he injured he stated no, I just cannot take another START with my record."

Carrier takes the position that Claimant has been conclusively shown to have performed his duties in a manner violative of an important safety regulation. The evidence at Claimant's hearing demonstrated that that the work being performed on the nose of the locomotive was in violation of Bulletin ENOL-018 requiring fall protection when working at heights greater than 6 feet above the running board. More seriously, he then strongly



implied several times that he would submit an injury claim if Carrier pursued discipline for violating the fall protection system in place on the property. Norfolk Southern's culture, as reflected in its Book of Safety and General Rules, requires employees to discharge their duties honestly at all times. Threatening to falsely claim an on duty injury is totally incompatible with those standards. With respect to procedural objections, Claimant received a fair and impartial hearing, free of any procedural defects. Charges proffered against an employee are not required to meet the high bar governing criminal prosecutions. As uniformly held by all Divisions of the NRAB and many Public Law Boards, Carrier is required only to clearly apprise the employee and his representatives of the subject matter of the employer's inquiry.

The Organization insists that with respect to the first infraction charged, working without protection, Claimant had not in fact been on the roof of the locomotive but on the top rung of a ladder. In any event, it argues, an isolated violation of NS Safety Rule ENOL-018, even if proven, would not likely be grounds for dismissal, and Weirich himself admits he did not consider it a major offense. With respect to the second charge, Carrier's failure to provide a sufficiently specific statement of the charges offended Section B. 1. (a) - Formal Investigation, requiring "a precise statement of date, time, place and nature of the occurrence that is the subject of the investigation." As determined in numerous awards, the discipline must be vacated on procedural grounds.

The ladder argument in our opinion is not compelling. Safety Bulletin ENOL-018 does not limit or in any way confine the fall protection requirement to work performed on locomotive roofs. Rather, its scope and emphasis is broadly on heights, providing that, "the fall arrest system...must be worn for all locomotive repairs...at a height of 6 feet or more above running board level." Claimant admits he did not comply with that rule on March 12 as he worked on the locomotive light.

Although standing alone that violation might very well not meet the standards of just cause, it does not stand alone. The second aspect of Claimant's behavior is seriously troubling, particularly when viewed in context with the totality of his service record. Threatening to report a fictive injury if Carrier sought to impose discipline for the safety violation is unacceptable conduct. It fairly can be said to reveal a disturbingly casual

OPINION AND AWARD

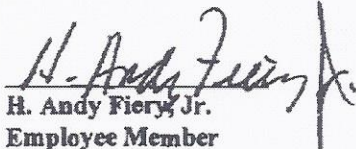
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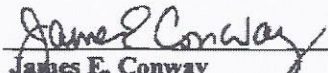
regard for honesty knifing against the trust each side must have in the other for a successful working relationship. The Board concurs with Carrier's assertion that it was dishonest, and as such, seriously concerning. The testimony and documentary evidence reflected in the transcript of investigation allows no margin for second guessing the Claimant's responsibility for the conduct charged.

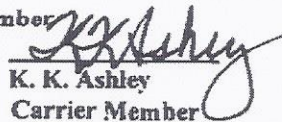
Did threatening to submit a false injury claim warrant dismissal? We conclude when viewed in the context of Claimant's Career Service Record, that unacceptable behavior justified Carrier's determination regarding the appropriate level of discipline. A review of that record reveals that beginning in 2006, Claimant had amassed 11 prior disciplinary entries including both Minor and Serious discipline assessed for safety violations, excessive absenteeism, failure to comply with local bulletins, failure to wear or possess proper safety equipment, failure to perform duties as assigned and, six months earlier, a final failure to follow instruction triggering 30 days of suspension. Significantly, in his testimony at the formal investigation Claimant conceded he had initialed as having read the governing bulletin upon returning to work following the 30-day actual suspension for failure to follow instructions. It is, on balance, a discouraging picture. Claimant's dismissal was for just cause.

A W A R D

The Claim is denied

  
H. Andy Fiery, Jr.  
Employee Member

  
James E. Conway  
Chairman and Neutral Member

  
K. K. Ashley  
Carrier Member

Dated: September 28, 2016