

PUBLIC LAW BOARD NO. 7425

**PARTIES) SMART - TRANSPORTATION DIVISION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of Montana/Dakota Third Seniority District (Forsyth, MT) Conductor S. H. Silver, hereinafter referred to as Claimant, for removal of Level S, Thirty (30) Day Record Suspension and One (1) Year Review Period and pay for all time lost as the result of the investigation held on December 18, 2013. (Organization File No. D486-063-14D; Carrier File No. 50-14-0027)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant was assessed discipline here on appeal in a Carrier determination that testimony and exhibits as brought forth at an investigation held on December 18, 2013 shows that the Claimant was guilty as charged of an act of hostility and misconduct affecting the interest of the company at approximately 1130 hours on December 5, 2013 at the Holiday Inn Hotel in Sheridan, Wyoming.

As brought forth in testimony and exhibits at the investigation, the Carrier received a telephone complaint from the Manager of the Holiday Inn in Sheridan, WY, Mrs. Shabnam Khan, in which it was stated that an employee who was identified as the Claimant, and being lodged at Carrier expense as his away from home facility, had verbally harassed her; she felt violated; she was wholly embarrassed by his actions and statements; and, that the Claimant would no longer be welcomed to stay at that facility. Mrs. Khan was asked if she was willing to provide a written statement. The statement as thereafter provided the Carrier and placed into evidence at the hearing reads as follows:

On December 5th, 2013 I was speaking to my Front Desk Manager Elizabeth Ramsay around 11:30 am. Mr. Sterling Silver had come up to the front desk, and both I and Mrs. Ramsay greeted Mr. Sterling (sic). Mr. Sterling (sic) then started aggressively attacking me about being a poor General Manager out of nowhere. He began accusing me stating that I was not appreciative about his business and that I

was not giving him a 15 percent discount coupon for the restaurant. He angrily and loudly attacked that I was a horrible manager and then stated that I was a terrible person. I was very confused, as I have very little contact with Mr. Sterling (sic) before this other than passing in or when he was arriving for his room. He started yelling that all of my employees talked behind my back about how horrible of a boss I was, and how I was lying and that it was my entire fault he was not getting a 15 percent discount. He continued to verbally assault me as he walked away toward the restaurant. He then began speaking badly to the restaurant staff about me and that admittedly stated he yelled at me. To be completely honest, I was so upset and shocked that I don't even remember all of the negative things he had said to me. We were both standing on the guest side of the front desk when this encounter happened, and being 8 months pregnant made me extremely uneasy that he was so close and verbally attacking me so aggressively for something very minute. If Mr. Sterling (sic) had just calmly made me aware that he was not receiving a meal discount I would have had no issue giving him a discount card at that moment, and ensured that the front desk would continue to do so. Because of Mr. Sterling's (sic) aggressive and verbally violent behavior, and his previous and ongoing behavior problems towards my staff, I ask that Mr. Sterling would no longer be allowed to stay at the Sheridan Holiday Inn. I am very much appreciative of our relationship with BNSF, and I feel that every other employee of BNSF that I have personally come across is professional and friendly. I hope in no way this affects this relationship, but I will not allow this abuse towards myself and certainly not towards my staff and the integrity of the hotel.

The Front Desk Manager, Mrs. Ramsay, also provided a written statement that was likewise read into evidence at the investigation. Dated December 5, 2013, this statement reads as follows:

Today around noon my General Manager, Shabnam Khan, and I were standing around discussing the hotel. Sterling Silver came up to the front desk to grab a complimentary newspaper that we keep out for our guests. While grabbing the newspaper, he turned to Mrs. Khan and said "I can't believe you, you are a horrible manager." In shock we both just stood there staring at him. He continued to go on and on about what a horrible manager she was and how all her employees talk about her and despise her. He had a very angry and hostile tone of his voice during this time and was very threatening in his body language he then grabbed his newspaper and stormed off. I believe he was upset because during his last visit one of the front desk

clerks didn't give him a 15 percent off coupon for being an IHG Rewards member, but I'm not 100 percent sure as he wasn't really making much sense. Please let me know if you have any questions.

The Claimant provided a lengthy written statement which acknowledges his having stayed at the Holiday Inn on the date at issue; going down to the lobby at about 1130 a.m. to eat lunch; stopping at the front desk; and, speaking with Mrs. Khan who was standing at the front desk. In part the Board finds pertinent the following excerpts from the Claimant's December 6, 2013 statement which was also read into the record:

I stopped to ask her questions. It had been past practice at the hotel to afford BNSF crews discounted meal coupons. This has been going on for years, as, as well as other small perks they were nice enough to give us for staying so frequently. Since this new manager had taken over, she had slowly taken away all perks and discounts we had previously been allowed. . . . Several trips ago, I was told by several of the ho – hotel employees that the manager had told them to no longer give the discount to BNSF employees. It has also been very clear in the past that she had a dislike for railroad employees. Her staff often talks about her remarks indicating she doesn't like BNSF employees. . . . I told her we knew that she had slowly taken away all of our perks, but was curious why she took away our meal discounts. . . . I told her . . . maybe she'd like to know what her employees have to say about her . . . I bring up these points in order to try to explain her mentality and perhaps explain that she very, she is very hard to deal with. . . . I told her that I thought maybe that, that was why she had so many problems at her hotel. . . . During this talk, I never once raised my voice to the manager. It was clear she was very mad and doing her best to lure me into some sort of conflict. I also never threatened her in any manner whatsoever. I used no aggressive body language and did not crowd her personal space. It should have been obvious for any reasonable person to understand they were in no danger. All I was, all I had was a conversation with her where we disagreed on a few points. She was the only one in the conversation that was agitated and initially became verbally confrontational. . . .

The Claimant's statement went on to relate that at about 1445 hours on December 5, 2013 as he was checking out of the Holiday Inn that he had heard rumors amongst staff personnel that Mrs. Khan had called the Carrier's Human Resources Department. The Claimant said he asked the desk clerk if Mrs. Khan was still around, that he "had been thinking about chatting with her again to try to cool her off." In this respect, the Claimant said upon Mrs. Khan coming out into the lobby that she was "already mad and confrontational" and that after she had reportedly

said something about his "manhood," that he "told her that she needed to calm down," and that he told her that he "hadn't done anything to her and it wasn't like anyone had attacked her or did anything that should make her act this way." The Claimant also said that he had told Mrs. Khan that "if she felt I had assaulted her perhaps the proper thing to do was to call the police," and although Mrs. Khan screamed at the desk clerk to call the police, that the desk clerk did not appear to be making any attempt to call the police. The Claimant said he told Mrs. Khan that he would wait for the police, but that maybe she should reconsider such action "because she would likely end up looking rather silly, and the police would likely tell her that nothing had happened they need to be in – that they need to be involved in." Lastly, the Board will note that the Claimant said he had asked Mrs. Khan, "if there was any chance we could work this out and be friends instead of having an incident like this," but that Mrs. Khan ignored him and he left the building.

The Board finds it significant that the hearing officer inquired as to whether the Claimant or his representative was interested in his contacting Mrs. Khan to testify by telephone, stating that he had been given a confidential telephone number to contact her. The Claimant did not respond to the offer. The Claimant's representative said: "No, I, I do not have any, she was not noted as uh, a witness to provide testimony on the Investigation Notice, so we will not pursue that."

It being evident that the Claimant and his representative elected not to have Mrs. Khan testify the Board finds lacking in merit Organization argument that they never had opportunity to question Mrs. Khan on her written statement. Further, as the Carrier offers there is ample precedent supporting use of written statements by non-employees as evidence at a formal hearing.

In the opinion of the Board, this is not as the Organization offers "a classic 'he said, she said' case." The statements of both Mrs. Khan and Mrs. Ramsay, as well as comments in the written statement of the Claimant, support the conclusion that the Claimant had approached and berated Mrs. Khan in confrontational and hostile manner that was also detrimental to the interests of the Carrier involving its relationship with the Holiday Inn as a lodging facility for crews.

In review of the record, the Board questions why, if the Claimant was of a belief that he had not spoken to Mrs. Khan in a hostile and aggressive manner that upon learning that Mrs. Khan had made a verbal complaint to the Carrier's Human Resources Department, the Claimant would ask Mrs. Khan if there was "any chance they could work this out." This, as with several other remarks contained in the Claimant's written statement, is not what someone would say if they had not done something wrong.

Certainly, if the Claimant had a problem with not being provided a meal discount or other problem with his Carrier provided lodging at the Holiday Inn he should

have addressed Mrs. Khan in a polite and non-hostile manner or to have brought any such matter of complaint to the attention of his immediate supervisor and/or his union representative for their consideration and such handling as appropriate with the Holiday Inn.

In the light of the above considerations and overall study of the record, the Board finds no basis to disturb discipline as imposed by the Carrier. The claim will, therefore, be denied.

Award: Claim Denied.



Robert E. Peterson
Chair & Neutral Member



Melissa A. Beasley-Coke
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 4/18/17