

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14078
Docket No. 13980
14-2-NRAB-00002-140011**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood Railway Carmen-Division of TCU/IAMAW
(BNSF Railway Company**

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe violated the terms of our current Agreement, in particular Rule 35, when on January 28, 2013, Carman David Broderick Roes was issued discipline in the form of a Standard Formal Reprimand and a one (1) year active review period for alleged excessive absenteeism on December 22, 2012.**
- 2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman David Broderick Roes, of all reference of the discipline assessed.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As background, on March 1, 2012, the Carrier put into effect Mechanical Attendance Guidelines in an effort to manage employee attendance. The guidelines

state, in part, that “absenteeism is excessive when an individual’s incident of absenteeism affects our ability to efficiently run business or impacts performance of his/her work group.” In determining what constitutes an absenteeism incident, the guidelines specifically state that absences due to medical leave, vacation, holidays, bereavement leave, paid military leave, paid personal leave and jury duty are typically recognized as excusable, and not as “incidents” in evaluating employee absenteeism. The Carrier states that it does not monitor each employee’s attendance on an individual basis and that “employees are responsible for their attendance.” The Carrier further states that its first knowledge that an employee may have reached a threshold of excessive absenteeism occurs when bi-monthly attendance reports are generated at the end of each pay period at which time a Carrier Officer makes a determination as to whether an employee has been excessively absent based on the number of incidents of “non-recognized absences” during a “rolling 12-month review period.”

The Claimant was assigned as a Carman at the Carrier’s facility in Alliance, Nebraska, and was instructed to report for a formal Investigation to determine his responsibility, if any, in connection with the following:

“... your alleged absenteeism on December 22, 2012, while assigned as a Carman at Alliance, NE. Consistent with the terms of the Mechanical Attendance Policy, all or part of your entire attendance record for the preceding 12 month rolling period, in addition to the foregoing dates, may be reviewed at the investigation. The date BNSF received first knowledge of this alleged violation is January 04, 2013.”

Following the formal Investigation, the Carrier advised the Claimant that he was being assessed a formal reprimand and was subject to a one year review period commencing January 28, 2013.

The record evidence is undisputed that on December 22, 2012, the Claimant called the Carrier and advised that he would not be present at work due to personal business; nor is it disputed that during the previous 12-month rolling period, the Claimant was absent from work for personal business on five other occasions, for a total of six absences during the period. The record also indicates that when the

Mechanical Attendance Guidelines were initially implemented, the Claimant was present at a Safety Briefing at which time the guidelines were reviewed.

While not disputing the fact that the Claimant was absent on personal business on six occasions during the 12-month rolling review period, the Organization emphatically asserts that the Carrier's Mechanical Attendance Guidelines are "vague and non-specific in identifying what is excessive absenteeism." The Organization contends that the guidelines do not specifically define the threshold of absenteeism and that employees, such as the Claimant, have no way of determining when "they might be in trouble for missing because they have no idea what missing too much is."

Contrariwise, the Carrier avers that it is within its right to establish a "subjective attendance standard of 'excessive' so long as it is not applied in an arbitrary or capricious manner." In support of its position, the Carrier cited two on-property decisions, Award 6 of Public Law Board No. 7155 and Award 15 of Public Law Board No. 7175, involving employees disciplined for excessive absenteeism.

The Board finds that the Carrier has the managerial right to establish reasonable standards for attendance and to make a determination based on a particular employee's attendance during the rolling 12-month period whether such employee is excessively absent so long as such determination is done in a reasonable manner. In Award 6 of Public Law Board No. 7155, the arbitrator, in dealing with similar attendance guidelines for Train Dispatchers, stated as follows:

"The Guidelines are not, as the Organization suggests, without a 'set standard.' Absenteeism is excessive when the incidents of absenteeism 'disrupt the regular working schedule of dispatchers in their assigned office.' While this determination is subjective, it is applicable, subject to the requirement that management's determination not be unreasonable, arbitrary, capricious or otherwise an abuse of discretion."

Applying these principles to the present case, the Board finds that the Carrier's determination that the Claimant's attendance had reached an excessive level was neither unreasonable nor arbitrary.

Relative to the discipline assessed in the instant case, the Carrier notes that the assessment of a formal reprimand was warranted and was the lowest level of discipline under its Policy for Performance and Accountability (PEPA) and its Mechanical Attendance Guidelines. The Board finds that because the discipline assessed in this case was neither arbitrary nor capricious, it will not be disturbed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of November 2014.