

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14081
Docket No. 13983
14-2-NRAB-00002-140014

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

(Brotherhood Railway Carmen-Division of TCU/IAMAW
PARTIES TO DISPUTE: (
(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 November 26, 2012, Carman Darrell R. White was issued discipline in the form of a Standard Twenty Day Record Suspension and a one (1) year review period for alleged failure to report for duty and provide a full eight (8) hours of service on September 25, 2012 and excessively leaving his assignment early or arriving late.
2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman Darrell R. White, 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.

The Claimant was assigned as a Carman at the Carrier's facility in Vancouver, Washington, and was direct to report for a formal Investigation to determine his responsibility, if any, in connection with the following:

“ . . . your alleged failure to report for duty and provide a full eight hours of service on September 25, 2012 and excessively leaving your assignment early or arriving late. In addition to the foregoing date, all or part of your entire record for the preceding twelve month rolling period, may be reviewed at this investigation. The date BNSF received first knowledge of this alleged violation is October 2, 2012.”

Following the formal Investigation, the Carrier advised the Claimant that he was being assessed a 20-day record suspension and was subject to a one-year review period commencing November 21, 2012.

As a preliminary issue, the Board will address the Organization's contention that the proceedings were fatally flawed based on its position that the Carrier failed to schedule the Investigation within the time limits prescribed in Rule 35 of the controlling Agreement, which reads, in part, as follows:

“ . . . Such investigation shall be set promptly to be held not later than twenty (20) days from the date of the occurrence, except that personal conduct cases will be subject to the twenty (20) day limit from the date information is obtained by an officer of the Carrier and except as provided in (b) hereof”

It is the Organization's position that the “date of the occurrence” was September 25, 2012, the date that the Claimant reported late for his assignment, and that the Carrier was required to schedule the Investigation to begin within 20 days of this date. The Organization contends that the Carrier's original scheduling of the Investigation for October 22, 2012, was beyond the 20-day time limit as set forth in Rule 35. Contrariwise, the Carrier asserts that its first knowledge that the Claimant's arriving late or leaving early had become excessive occurred on October 2, 2012, when the Carrier reviewed bi-monthly reports of the Claimant's number of incidents of “tardy/early quits” during a “rolling 12-month review period.” Accordingly, the

Carrier concludes that its initial scheduling of the formal Investigation was within the mandated time limits of Rule 35 of the Agreement.

The Board finds that the “occurrence” giving rise to the formal Investigation was not simply the incident on September 25, 2012, but rather it was the relationship of this incident to other incidents of lateness or early quits during the preceding 12 months. This “occurrence” did not happen until the Carrier’s October 2, 2012 review of the bi-monthly attendance records. Therefore, the Board finds that the Carrier was in compliance with Rule 35 in the original scheduling of the Investigation. See Award 1 of Public Law Board No. 7491, which reached a similar conclusion in a dispute between the same parties now at bar.

The evidence of record is undisputed that on October 5, 2012, the Claimant reported late for his assignment; nor is it disputed that during the previous 12-month rolling period, the Claimant was either late for work or left early on eight other occasions, for a total of nine “tardy/early quit” incidents during the period. At the formal Investigation, the Claimant, while giving a variety of excuses for his lateness on several of the dates, admitted to the accuracy of the records and agreed that it was his responsibility to arrive at work on time. Accordingly, the Board finds that the Carrier sustained its burden of proving the Claimant’s guilt of the charge.

While not disputing the fact that the Claimant was late reporting for work on nine occasions during the 12-month rolling review period, the Organization emphatically asserts that there is nothing in the Carrier’s Mechanical Attendance Guidelines that specifically defines how many incidents of tardiness or early quits constitute an excessive amount and that employees, such as the Claimant, have no way of determining when they will be cited for excessive absenteeism.

In response, the Carrier states 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 pattern of attendance as to whether such employee has reached an excessive level of absenteeism, so long as such determination is done in a reasonable manner. The Board finds the Carrier's determination that the Claimant's tardiness had reached an excessive level was reasonable and not done in an arbitrary manner.

Relative to the discipline assessed, the Carrier notes that the assessment of a 20-day record suspension was warranted and was consistent with the guidelines of progressive discipline as set forth in its Policy for Employee Performance and Accountability (PEPA). The Board finds that the discipline assessed was neither arbitrary nor capricious and 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.