

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14086
Docket No. 13988
14-2-NRAB-00002-140019

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 October 10, 2012, Carman William F. Ohara was issued discipline in the form of a Standard Formal Reprimand and a one (1) year review period for alleged excessive absenteeism.
2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman William F. Ohara, 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 Portland, Oregon, and was assessed a formal reprimand and a one-year review period following a formal Investigation in connection with the following:

“. . . your alleged absenteeism on August 19, 2012, while assigned as a Carman at Portland, OR. Consistent with the terms of the Mechanical Attendance Guidelines, 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 September 04, 2012.”

As a preliminary issue, the Board will address the Organization’s contention that the proceedings in this case 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" in this case was August 19, 2012, the date that the Claimant called in and marked off sick 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 September 21, 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 absences had become excessive occurred on September 4, 2012, when the Carrier reviewed bi-monthly reports of the Claimant's number of incidents of absences 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 August 19, 2012, but rather it was the relationship of this incident to other incidents of absence during the preceding 12 months. This "occurrence" did not happen until the Carrier's September 4, 2012 review of the bi-monthly attendance records. Therefore, the Board finds that the Carrier was in compliance with Rule 35 in the 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 August 19, 2012, the Claimant called the Carrier and advised that he would not be present at work due to personal illness; nor is it disputed that during the previous 12-month rolling period, the Claimant was absent from work for sickness or 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 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 "knowing when they will be cited for excessive

absenteeism because the Carrier refuses to enlighten the employees as to how much is too much.”

In opposition to the Organization’s position, 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 as to 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 this 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.

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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.