

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14094
Docket No. 13968
14-2-NRAB-00002-130019

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rule 40 and Rule 26, in particular, the BNSF Railway Company arbitrarily and unjustly disciplined Topeka, Kansas, Mechanical Department Electrician Apprentice James J. McKee as a result of an unfair Investigation conducted on April 26, 2012. Electrician Apprentice McKee was assessed a Standard Formal Reprimand with a One (1) Year Review Period that commenced on May 17, 2012.
2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Electrician Apprentice James J. McKee, the BNSF Railway Company be ordered to remove all record of this matter and the discipline assessed from Electrician Apprentice James J. McKee’s personal record.”

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.

Claimant James J. McKee, a seven-year employee working as a Mechanical Department Electrician Apprentice with a date of March 12, 2012, at the time this claim arose, was assessed a written Standard Formal Reprimand on May 17, 2012, together with a one-year review period commencing May 17, 2012, for failing to contact his Supervisor 30 minutes in advance of his on-duty time and his absence without proper authority on March 23, 2012. The Organization here challenges that action as unwarranted.

The facts triggering the claim are in all important respects undisputed. On March 23, 2012 the Claimant had been scheduled to begin his tour of duty at 7:00 A.M. At 6:36 A.M. as he was reporting to the Topeka System Maintenance Terminal (SMT) he received a call from his spouse informing him that she had left her purse and car keys in his truck. Curiously, although parked at a stop sign within view of the SMT, the Claimant admits he neither called nor proceeded across the street to locate his Supervisor. Rather, the Claimant admits that he quickly turned around and, in an effort to make certain his wife could get to work, he decided to immediately drive home to return her belongings, realizing that he would, as a result, be late for work himself. In recognition of that reality, he attempted to call the on-duty Supervisor at the SMT twice prior to 7:00 A.M. while parked in his driveway. He states, however, that both calls went unanswered and he wound up clocking in at 7:25 A.M., inconsistent with the local shop attendance policy requiring contact with a Supervisor “no less than 30 minutes prior to . . . start time.” Following the Carrier’s formal Investigation conducted on April 20, 2012, he was found to be in violation of Rule MSR 28.13 – Reporting and Complying with Instructions and Rule MSR 28.14 – Duty – Reporting or Absence.

Among other arguments advanced on the Claimant’s behalf, the Organization contends that application of the local policy to the Claimant’s facts was unreasonably rigid under the circumstances. As a new Apprentice, it argues, rotating into new work areas regularly, the Claimant was never provided a phone contact for his new Supervisor, Jamie Oehlertz. Nor, it says, was Oehlertz’s number listed anywhere in shop policy materials. The record of phone usage received in evidence demonstrates that prior to 7:00 A.M., McKee tried twice from his driveway without success to call the Duty Supervisor’s number. He then determined that the safest and most efficient thing to do, rather than try to call again while driving, was to go directly back to the SMT without “wasting more time” with further attempts to call.

Based upon a thorough review of the record, we must respectfully decline to reach the Claimant’s contention that the Carrier’s reporting policy is unreasonable on

its face in requiring advance notice without regard to circumstances. Under the circumstances facing the Claimant, he clearly may have as easily crossed over to the SMT and notified his Supervisor in person of his personal problem before driving back home. So the problem posed is not the policy, but the Claimant's judgment in choosing to bypass reporting obligations after reporting to work. He admits that he was well aware of that policy, but instead of calling or notifying the Carrier in person, he opted to go home in aid of his wife's dilemma.

The Carrier's discipline in response to the Claimant's misjudgment – a standard formal reprimand – was the minimum discipline possible under its progressive discipline policy. Given the lapse of time since issued, the review period imposed has expired and the Claimant has remained discipline free for the past year. The Carrier's action has thus served its intended purpose. On that basis, and recognizing that the fundamental problem presented here was neither poor policy, negligence, nor purposeful disregard of applicable Rules, but a momentary misjudgment in the face of what he saw as exigent circumstances, we direct the Carrier to remove the written reprimand from the Claimant's records as requested by the Organization.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of December 2014.