

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14104
Docket No. 13993
14-2-NRAB-00002-140024

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 Railroad Company violated the terms of the current Agreement, in particular Rule 35, when on May 30, 2013, Carman Conrad Perry was issued a formal reprimand and one (1) year review period for alleged excessive absenteeism on April 26, 2013.
2. That accordingly, the Carrier be ordered to remove all correspondence and record of this discipline and the investigation transcript from the Claimant’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.

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

“... your alleged excessive absenteeism on April 26, 2013, while assigned as a Carman at Memphis, TN. 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 May 02, 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 May 29, 2013.

The evidence of record is undisputed that on April 26, 2013, the Claimant reported one hour 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 five other occasions, for a total of six “tardy/early quit” incidents in the period. During the formal Investigation, the Claimant admitted to the accuracy of the records, but submitted documentation showing that on some of the dates he was late due to taking his wife or son to the doctor. He also testified that his wife has medical issues that often required his attention.

Initially, the Board notes that the Claimant did not provide the Carrier any documentation relative to his absences until after he was directed to report for an Investigation and that some of the documentation was a year old. Also, a review of the documents indicates that most of the dates on the documents had no direct correlation with the dates in question. Relative to the Claimant’s contention that his wife’s medical issues contributed to his attendance problems, the Board notes that when asked, the Claimant stated that prior to the Investigation he had not applied for FMLA, but “was in the process of it now.” 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 six occasions during the 12-month rolling review period, the Organization emphatically asserts that there is nothing in the Mechanical Attendance Guidelines that specifically defines how many incidents of tardiness or early quits constitute an excessive amount and that the Carrier “cannot hold employees responsible for

excessive absenteeism when they refuse to say what the threshold is.” In addition, the Organization contends that it is improper to discipline an employee, such as the Claimant, who has a legitimate reason for being late or absent.

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. In addition, the Carrier cited Second Division Award 14026, which stands for the principle that a carrier may discipline an employee for failing “to achieve regular, full-time employment” even if the absences were for legitimate reasons.

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 whether such employee has reached an excessive level of absenteeism, so long as such determination is done in a reasonable manner. Even taking into account the Claimant’s explanation for his lateness/early quits, this does not relieve the Claimant of his responsibility for regular and punctual attendance. 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 formal reprimand was warranted and was the lowest level of discipline under its Policy for Performance and Accountability (PEPA). Because the Board finds that the discipline assessed was neither arbitrary nor capricious, it will not be disturbed.

AWARD

Claim denied.

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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 17th day of December 2014.