Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
SECOND DIVISION

Award No. 14111
Docket No. 13991
14-2-NRAB-00002-140022

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani 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, unjustly and excessively disciplined Topeka, Kansas, Mechanical Department Electrician Apprentice Jordan D. Garcia as a result of an unfair Investigation conducted on December 6, 2012. Electrician Apprentice Jordan D. Garcia was assessed a Standard Formal Reprimand with a One (1) Year Review Period commencing December 17, 2012.

2. That accordingly, and as a result of the unwarranted, arbitrary, unjust and excessive discipline assessed Mechanical Department Electrician Apprentice Jordan D. Garcia, the BNSF Railway Company be ordered to remove all record of this matter and the discipline assessed from Electrician Apprentice Jordan D. Garcia'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.

As background, on March 1, 2012, the Carrier put into effect its 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 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 is when bi-monthly attendance reports are generated at the end of each pay period at which time a Carrier Officer makes a determination 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 an Electrician Apprentice at the System Maintenance Terminal in Topeka, Kansas, and was directed to report for a formal Investigation to determine his responsibility, if any, in connection with the following:

> **". . . your alleged violation as of November 1, 2012, wherein you allegedly have excessive absenteeism while working [as] an electrician Apprentice at the Topeka SMT. Consistent with the terms of the Mechanical Attendance Guidelines, all or part of your entire attendance record for the preceding 12-month period, in addition to the foregoing dates, may be reviewed at the investigation. The date BNSF received first knowledge of this alleged violation is November 27, 2012."**

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 December 17, 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 40 of the controlling Agreement, which reads, in part, as follows:

> **"Formal investigation, when accorded under the provisions of this rule, must be convened within 20 calendar days (30 such days if the employee(s) is not suspended) from the date on which the Company has factual knowledge of the occurrence to be investigated."**

It is the Organization's position that the date on which the Carrier had "factual knowledge of the occurrence" was November 1, 2012 – the date that the Claimant called in and advised the Carrier that he would be off work for personal business – and that the Carrier was required to schedule the Investigation to begin within 30 days of this date. The Organization contends that the Carrier's original scheduling of the Investigation for December 4, 2012, was beyond the 30-day time limit as set forth in Rule 40. Contrariwise, the Carrier asserts that its first factual knowledge that the Claimant's absences had become excessive was on November 27, 2012, when the Carrier reviewed the attendance 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 set forth in Rule 40 of the Agreement.

The Board finds that the "occurrence" giving rise to the formal Investigation was not simply the incident on November 1, 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 November 27, 2012 review of the attendance records. Therefore, the Board finds that the Carrier's scheduling of the Investigation was in compliance with Rule 40. See Award 1 of Public Law Board No. 7491 which reached this same conclusion in a similar dispute on this property involving comparable Agreement language.

With regard to the merits, the evidence of record is undisputed that on November 1, 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 various reasons on

17 other occasions, for a total of 18 absences in the period, ten of which occurred in the previous month. The record also indicates that when the Mechanical Attendance Guidelines were initially implemented, the Claimant was present at a town hall meeting at which time the guidelines were reviewed.

While not disputing the fact that the Claimant was absent for various reasons on 18 occasions during the 12-month rolling review period, the Organization emphatically asserts that the Mechanical Attendance Guidelines were put into effect "without a clear understanding by anyone." The Organization contends that the guidelines do not define any parameters "where an employee would know that they were becoming excessive in their attendance until they were cited for investigation."

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 an on-property decision – Award 6 of Public Law Board No. 7155 – involving an employee 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 a 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 not unreasonable or arbitrary.

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.

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.