

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14112  
Docket No. 13992  
14-2-NRAB-00002-140023

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 4, 2012. Electrician Apprentice Jordan D. Garcia was assessed a Standard 10 Day Record Suspension with a One (1) Year Review Period commencing December 14, 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.

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 failure to comply with instructions on November 8, 2012, by failing to contact your supervisor prior to your on duty time and notifying him you were not going to report to work, your alleged absence from duty without proper authority for not making contact with shop management until 8:20 via telephone on November 8, 2012, and your failure to make contact as specified in TS101, TSMT Guidelines for Calling in Absent on November 8, 2012.”**

Following the formal Investigation, the Carrier advised the Claimant that he was being assessed a ten-day record suspension and was subject to a one-year review period commencing December 14, 2012.

The evidence of record is undisputed that on November 8, 2012, the Claimant was scheduled to report for work at 7:00 A.M. and that at 8:20A.M., the Claimant called his Supervisor to advise that he would not be reporting for work that day. At the formal Investigation, General Foreman Wylie entered into the record a copy of the Carrier’s “Procedure for Calling Absent,” which requires that an employee who is calling in absent must notify his/her Supervisor no less than 30 minutes prior to his/her starting time. Also entered into the record was a letter confirming that the Claimant had been previously counselled regarding the requirements of the procedure for calling in absent. The Claimant acknowledged that he had been previously counselled regarding the procedure and also admitted that he was in violation of the procedure by not calling his Supervisor in a timely fashion.

While not disputing the basic facts as outlined above, the Organization states that the Carrier’s procedures were unreasonable because the Claimant would have had to call in absent at 6:30 A.M. and the Claimant “had a situation he was dealing with and called as soon as he physically could.” The Organization also contended that the procedures make “no provisions for circumstances that are beyond an employee’s control,” citing Rule 26 of the controlling Agreement in support of its position.

The Board does not find it an oppressive requirement for an employee who intends to be absent from work to notify his Supervisor at least 30 minutes prior to reporting

time, regardless of the starting time of the assignment. Nor does the Board find that the Carrier's procedures are contrary to Rule 26 of the Agreement which states that if sickness or other unavoidable cause prevents an employee from reporting at his regular post, such employee "shall notify his supervisor as promptly as possible." While the Organization has created a scenario where some event may make it impossible for an employee to timely notify supervision as required by both the Carrier's procedure and Rule 26, no such fact pattern supports this theory in the instant case. During the Investigation the Claimant stated that he "physically could not call in" but gave no explanation for his purported inability to timely call his Supervisor; nor did he submit any proof in this regard. Accordingly, the Board concludes that the evidence of record clearly supports the Carrier's determination that the Claimant was guilty of the offense with which he was charged.

Relative to the discipline assessed, the Carrier notes that the assessment of a ten-day record suspension was warranted and consistent with not only its Mechanical Attendance Guidelines, but also the guidelines of progressive discipline as set forth in 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.