

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14139  
Docket No. 14010  
16-2-NRAB-00002-140043**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood Railway Carmen-Division of TCU/IAMAW  
(BNSF Railway Company)

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe violated the terms of our Agreement dated February 1, 2006, in particular Rule 35, when on May 28, 2013, Carman Jeffery J. McGowan, Jr. was issued discipline in the form of a Standard Formal Reprimand and a one year active review period for alleged absenteeism on March 15, 2013.
2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman Robert Eona (sic), 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 the 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 bonafide medical leave, vacation, designated 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 it 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 Policy also states that incidents of “Tardy/Early Quits” will also be reviewed.

The Claimant was issued a formal reprimand with a one-year review period following a formal Investigation in connection with the following:

“. . . your alleged absenteeism on March 15, 2013, while assigned as a Carman at Alliance, NE. 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 March 19, 2013.”

The record in this case indicates that on March 15, 2013, the Claimant left his assignment 34 minutes early in order to coach at a community wrestling match. In addition, during the rolling 12-month period, the record contains notations of four other late arrival/early quits. Specifically, on May 7, 2012, the Claimant advised his supervisor that he had vomited and was ill and was told to leave before the end of his shift; on July 10, 2012, the Claimant was approximately 1 minute late which was coded LP – Late with permission; on July 23, 2012, the Claimant was approximately 1 minute late which was coded LN – Late with notification; and, on March 8, 2013, the Claimant left early, again to coach at a wrestling match. Relative to the two early

quits in connection with his coaching, the testimony of the General Foreman indicates that these were discussed with him the month prior to the events.

Upon review of the entire record, the Board finds that on four of the five dates, the Claimant had permission to arrive late on one occasion, to leave early on one occasion due to sickness and had permission to leave early on two other occasions to coach wrestling matches. While the Board recognizes that there are situations where frequent absences even with permission may appropriately result in discipline, the Board finds that the particular circumstances present herein do not support the Carrier's finding that the Claimant has been excessively absent. When the Claimant discussed the upcoming two wrestling matches well in advance thereof, his supervisor should have advised him that these types of early quits were not acceptable and would be documented for purposes of tracking his attendance record. The Board notes that, going forward, Claimant could avoid having these days count against his attendance record by using vacation days or other appropriate leave. Accordingly, the Board Rules that the Formal Reprimand should be removed from the Claimant's record.

**AWARD**

Claim sustained.

**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 20th day of December 2016.