

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14143
Docket No. 14032
16-2-NRAB-00002-140068**

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 violated the terms of the February 1, 2006 Agreement, specifically Rule 34, when Carman Judith Batterson was issued discipline in the form of a Standard Formal Reprimand and a one (1) year active review period commencing May 28, 2013 for alleged absenteeism on April 9, 2013.**
- 2. That accordingly, the Carrier be ordered to expunge the Claimant’s record of all reference to the discipline assessed as a result of the investigation held May 9, 2013.”**

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 a 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 failure to report for duty and provide a full eight hours of service on April 9, 2013, and for excessively leaving your assignment early or arriving late while assigned as a Carman at Vancouver. Consistent with the terms of the Mechanical Attendance Guidelines, all or part of your entire record for the preceding 12 month rolling period, in addition to the foregoing date, may be reviewed at the investigation. The date BNSF receive first knowledge of this alleged violation is April 17, 2013.”

The basic facts in this case are not in dispute. The record indicates that on April 9, 2013, the Claimant reported late for her assignment and that during the previous 12 month rolling period, the Claimant was late or left early on four other occasions. When the Claimant was asked at the investigation whether she had

complied with the Carrier's attendance rules, she replied that she had tried but was "a little lacking on that."

While not disputing the fact that the Claimant was late or left early on five occasions during the 12-month rolling review period, the Organization emphatically asserts that the Carrier's Mechanical Attendance Guidelines are vague and non-specific in identifying what is excessive absenteeism. The Organization contends that the guidelines do not specifically define the threshold of absenteeism and that employees, such as the Claimant, have no way of determining when "they might be in trouble for missing because they have no idea what missing too much is."

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 has cited two on-property decisions, Public Law Board 7155, Award No. 6 and Public Law Board 7175, Award No. 15, involving employees 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 the rolling 12-month period whether such employee is excessively absent so long as such determination is done in a reasonable manner. In Award No. 6 of Public Law Board 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 late arrivals/early quits had reached an excessive level was not unreasonable or arbitrary.

Relative to the discipline assessed in this case, 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). The Board finds that the discipline assessed in this case was not arbitrary or capricious and will not disturb same.

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 20th day of December 2016.