

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14154
Docket No. 14035
16-2-NRAB-00002-140070**

The Second Division consisted of the regular members and in addition Referee Don A. Hampton 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, Rule 39 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 April 10, 2013. Electrician Apprentice Jordan D. Garcia was assessed the ultimate penalty of dismissal from the Carrier’s service on April 29, 2013.**
- 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 return Electrician Apprentice Garcia to service immediately, to compensate Electrician Apprentice Garcia for all lost wages, rights, benefits and privileges which have been adversely affected as a result of the dismissal, and further, remove all record of this matter and the discipline assessed from Mechanical Department 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

Claimant was notified by letter dated March 28, 2013:

“An investigation has been scheduled at 1300 hours, Wednesday, April 10, 2013, at South Conference Room, Superintendent’s Office, 100 NE Jefferson Trafficway, Topeka, KS, 66607, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged excessive absenteeism Friday, March 8th, 2013. In addition, all or part of your entire attendance record since March 8th, 2012 may be reviewed at the investigation including, but not limited to, the following dates, 4/27/2012, 10/4/2012, 10/5/2012, 10/8/2012, 10/11/2012, 10/12/2012, 10/15/2012, 10/19/2012, 10/22/2012, 10/25/2012, 11/1/2012, 11/19/2012 and 3/8/2013. The date BNSF received first knowledge of this alleged violation is March 19, 2013.

This investigation will determine possible violation of MSR 28.13 Reporting and Complying with Instructions and MSR 28.14 Duty Reporting or Absence.

Contact Mark Stockman at XXX-XXX-XXXX or XXXX@bnsf.com with any questions regarding this investigation, postponement or waiver.

Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the Labor Agreement. Please acknowledge receipt by affixing your signature in the space provided below.”

Investigation was held on April 10, 2013, and Claimant was notified by letter dated April 29, 2013:

“As a result of investigation held on Wednesday, April 10, 2013 at 1300 hours at South Conference Room, Superintendent’s Office, 100 NE Jefferson Trafficway, Topeka, KS, 66607 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for excessive absenteeism.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MSR 28.13 Reporting and Complying with Instructions, and MSR 28.14 Duty Reporting or Absence.

In assessing discipline, consideration was given to your personnel record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative. This letter will be placed in your personnel record.

Please contact Rickie Johnson at 785-435-5714 to arrange a time to return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you.”

The Claimant was dismissed on April 29, 2013 for failing to maintain a satisfactory attendance record, thereby being in violation of MSR 28.13 and MSR 28.14.

The Organization argues that the Claimant was arbitrarily, unjustly, and excessively disciplined as a result of an unfair Investigation. Further, the facts disclosed at the Hearing neither support the Carrier’s allegations nor warrant the

discipline assessed. The Organization also raises several procedural issues in support of the Claimant's position.

The Carrier contends that the Claimant was well aware of his attendance issues as they had been brought to his attention on numerous occasions. The Carrier emphatically states they have met their burden of proof and the claim must be rejected.

The Board has reviewed carefully the record before us, and initially we do not find any violations of the Claimant's due process rights. The Claimant, a fairly short service employee, has an attendance record that leaves much to be desired. The Claimant has been counselled and disciplined on multiple occasions, all to no avail. The record reflects the Carrier has attempted to assist the Claimant to address his issues. These efforts by the Carrier have not met with success. Based on the record there is no reason to revoke or alter the discipline imposed.

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.