

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42715
Docket No. MW-43359
17-3-NRAB-00003-160104**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IHB Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Sectionman T. Wirz by letter dated October 7, 2014 for alleged violation of MWOR 1.15 Duty Reporting or Absence in connection with “his alleged ‘... failure to report for duty at the designated time and place beginning on September 2, 2014, and continuing thereafter while assigned to headquarterd position on gang TSEC0365.’ was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-15-D070-1/10-15-0027 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Wirz shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be made whole for all wage loss suffered.”**

FINDINGS:

The Third 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 Carrier asserts that the Claimant's admission provides substantial evidence and there are no disqualifying procedural defects. Incarceration does not excuse the Claimant's extended, unauthorized absence, which is a stand-alone, dismissible violation. Should the claim be sustained, the Claimant should be restored to service and receive only his lost seniority and wages, less outside earnings.

The Organization insists that dismissal was excessive in view of Claimant's eight years of service and his good record. Moreover, he tried to obtain a leave of absence, tried to find a way to work and did not willfully abandon his employment. The Claimant should have received a Formal Letter of Reprimand under Carrier policy, but that step was bypassed. The Claimant should be returned to service and made whole for lost seniority, wages and benefits, with no consideration given to outside earnings.

The Claimant had his absence from August 25 to September 2, 2014 approved by the Carrier and thereafter by his own admission was absent without authorization from September 2 to September 16, 2014, the day of the subsequent Investigation. He had been denied a leave of absence and had been verbally instructed to report as scheduled. Apparently incarcerated, the Claimant called daily to say that he could not report and tried unsuccessfully to find a position with the Carrier in the geographical area in which his legal troubles were occurring. This is not a case where the employee did not care about protecting his seniority or had abandoned his job.

But neither is this a case in which the absences could be excused. MOWOR 1.15 Duty Reporting or Absence requires that "Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. . . . Employees must not leave their assignment . . . without proper authority.

Continued failure by employees to protect their employment will be cause for dismissal.” There is precedent for the principle that incarceration does not excuse a failure to protect employment. Public Law Board No. 6986, Award 16. Extended unauthorized absence is a stand-alone dismissible violation. See PEPA, Appendix B. The Organization’s contention that the Carrier’s “Employee Absenteeism Policy” should apply so that the Claimant should have been progressively disciplined (counseling, formal letter of reprimand, investigation) at the formal letter level is unpersuasive. Assuming that each unauthorized absence counts as one event regardless of how many days are involved, an employee could, for example, be gone without authorization for a month, return for a week and be gone without authorization for another month, yet receive only a formal letter of reprimand. The Board does not believe that the “Employee Absenteeism Policy” is intended to apply to extended, unauthorized absences, particularly when the language of Rule 1.15 is considered.

No endeavor, whether for profit or non-profit, can be rationally managed without an expectation that employees will consistently appear for work when scheduled so that human resources planning, including the minimization of last-minute callouts to fill vacancies, possibly at overtime rates, addresses the work to be done. The Claimant had been gone without authorization for two weeks at the time of his Investigation and the record contains no indication of when he might next be available for work. The Carrier was not obligated to agree to an open-ended leave of absence. Thus, the dismissal was not arbitrary and capricious.

AWARD

Claim denied.

Form 1
Page 4

Award No. 42715
Docket No. MW-43359
17-3-NRAB-00003-160104

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 Third Division

Dated at Chicago, Illinois, this 31st day of August 2017.