

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44758
Docket No. MW-46403
22-3-NRAB-00003-210036**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. R. Gant, Jr., by letter dated May 15, 2019, for alleged violation of The Belt Railway Company’s Standards for Employee Attendance during his employment in the Track Department was arbitrary, excessive and in violation of the Agreement (System File RI-1949B-802 BRC).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Gant, Jr. shall be:**

‘* reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits.**

The Claimant shall be made whole for all financial losses as a result of the violation, including compensation for:

1) straight time for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount [sic] is not reduced by earnings from alternate employment obtained by the Claimant while wrongfully removed from service);

2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was out of service;

3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any Junior employee for work the Claimant could have bid on and performed had the Claimant not been removed from service;

4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service;

5) also, all months of service credit with the Railroad Retirement Board he would have accumulated had he not been unjustly removed from service.

All notations of the dismissal should be removed from all Carrier records as outlined in Rule 47 of the effective Agreement.”

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.

After investigation held May 13, 2019 and by letter dated May 15, 2019, the Claimant – an employee in the Carrier’s service since June 2014 – was ultimately dismissed effective April 12, 2019 for violation of the Carrier’s Attendance Policy.

The Carrier’s Attendance Policy specifies a review of employee attendance on a quarterly basis and “more than two (2) unexcused absences in a calendar quarter” constitutes a violation of the Attendance Policy. Carrier Exhibit A-9 at 1. The record shows that during the first quarter of 2019, the Claimant accumulated absences on January 23, 25 and February 13, 2019 and the record sufficiently

substantiates that not only did the Claimant not come to work on those dates, he also did not call off to his supervisor as required. See Tr. 20-21, 26-27, 29-30. The Claimant's absences were therefore properly considered as "unexcused" by the Carrier under its Attendance Policy.

The Claimant testified that he could not recall whether he was off on January 23, 25 and February 13, 2019, but states that he always calls off when he is not coming to work. Tr. 31. When directly asked whether he was off on those dates, Claimant testified "I don't recall." Tr. 34. The Claimant testified that his call offs are made to "[e]ither the FMLA or Work Partners or my immediate supervisor." Tr. 31. See also, Tr. 34. Further (and somewhat different from his prior testimony) according to the Claimant, when he calls off he calls FMLA Work Partners and "[t]hey locate the immediate supervisors." Tr. 34.

This claim lacks merit.

First, the underlying facts are really not disputed. The record sufficiently shows that the Claimant missed work on January 23, 25 and February 13, 2019 and did not follow the call off procedures which included notifying his supervisor that he would be off as required.

Second, the Carrier has sufficiently shown that the Claimant was not at work on January 23, 25 and February 13, 2019. The Claimant's inability to "recall" whether he was off on those dates does not negate the Carrier's showing that the Claimant was, in fact, off on those dates.

Third, the Claimant's assertion that he was entitled to FMLA leave on the dates in dispute does not negate his obligation to appropriately follow the call off procedures in order to avail himself of FMLA coverage – which the Claimant did not do. The Claimant was approved for intermittent FMLA leave. The Claimant was made aware of the obligation to call off when using FMLA leave in his FMLA certification letter dated December 17, 2018 which states that for this approved intermittent FMLA leave covering the period November 27, 2018 through May 26, 2019, "... [f]ailure to give notice in accordance with the usual and customary call-out procedures, may delay (or even deny) FMLA approval for the leave." Carrier Exhibit A-11 at 1. The record shows that the "usual and customary call-out procedures" meant that in addition to notifying the Carrier's FMLA contractor Work Partners, the Claimant had to also notify his supervisor that he was going to be off work. The record sufficiently shows that Claimant did not notify his supervisor on the dates in dispute. And there is even some doubt as to whether the

Claimant was even off on two of the three days in question for FMLA reasons. See Carrier Exhibit D-6 at 6 which only shows that Claimant used the February 13, 2019 date for FMLA reasons (and not January 23 and 25, 2019).

Fourth, given the Carrier's Attendance Policy which specifies that "more than two (2) unexcused absences in a calendar quarter" constitutes a violation of the Attendance Policy, the Carrier has shown through substantial evidence that the Claimant violated that policy as charged.

Fifth, dismissal was not arbitrary. The Claimant's record shows multiple prior violations of the Carrier's Attendance Policy which resulted in suspensions of three, 15 and 30 days in 2018 and 2019. Carrier Exhibit C. Progressive discipline was followed prior to the Claimant's dismissal.

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 Third Division

Dated at Chicago, Illinois, this 29th day of July 2022.