

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY

Case No. 436 – Award No. 436 – Claimant: Washington
Carrier File No. 14-12-0390
Organization File No. 240-13A1-1230.CLM

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing June 22, 2012, when Claimant, G. Washington (6532121), remained dismissed by letter dated August 9, 2012 for his absence from duty without authority from June 15, 2012 and forward. The Carrier alleged violation of MOWOR 1.15 Duty Reporting or Absence, following dismissal on July 23, 2012 per Appendix 11.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing June 22, 2012, continuing forward and/or otherwise made whole.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, G. Washington, was hired by the Carrier in 1995. On June 22, 2012, the Carrier sent Claimant a letter advising him that he had being dismissed, pursuant to the provisions of a Letter of Understanding dated July 13, 1976, for being absent without proper authority for more than five consecutive work days beginning June 15, 2012. On July 3, 2012, following a request by the Organization for a Formal Investigation, the Carrier notified Claimant that an investigation had been scheduled in connection with

Claimant's asserted absence without proper authority on those dates. The letter also stated that the investigation would determine possible violation of Maintenance of Way Operating Rule 1.15 Duty Reporting or Absence. Following the investigation, on August 9, 2012, the Carrier sustained the dismissal.

The applicable Carrier Maintenance of Way Operating Rule provides, in relevant part:

1.15 Duty—Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

Appendix 11, Letter of Understanding to the parties' Agreement provides, in relevant part:

[T]his will confirm our understanding that . . . to terminate the employment of an employee who is absent from duty without authority, the Company shall address such employee in writing at his last known address, by registered or certified mail, return receipt requested, with copy to the General Chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he so desires, request that he be given an investigation under (Rule 13) of the current Agreement.

NOTE: Effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent from duty without authority more than five (5) consecutive work days.

The essential facts of this case are not in dispute. Claimant was not present at his assignment from June 15 through 22, 2012. Carrier Roadmaster Jeremy Papenfuhs testified at the investigation that Claimant's gang was working in the Winslow yards, and Claimant contacted him by text message on June 18, 2012, the first day of his absence. The text messages were entered into the investigation record, and show that Claimant contended he had car trouble and would likely not be in for work. Mr. Papenfuhs replied that this absence would be considered unapproved. He stated that Claimant did not contact him again and he never approved any absence for Claimant that week. He denied receiving any messages from Claimant on June 20, 2012.

Claimant testified at the investigation that he was staying in a hotel in Winslow, the site of the job, when, on June 15, 2012, his co-worker received an emergency call. He stated that he was the co-worker's only ride, so he needed to take him to his home,

approximately 1½ hours away. He testified that his was on his way back to Winslow the following Monday, June 18, 2012, when his car broke down and he sent Mr. Papenfuhs the text. He acknowledged that the one text exchange was the only one he had with Mr. Papenfuhs.

Claimant stated that he did not make it back to Winslow that day and did not return there until June 25, 2012. He acknowledged that he did not have permission to be off work June 15, 18, 19, 20, 21 and 22, 2012. He explained that he had to wait for car parts and windows, which were on order so it took a couple of days. He maintained that he sent Mr. Papenfuhs a text on June 20, 2012 informing him that someone had broken his windows. He added that he also spoke to Mr. Papenfuhs that day and informed him that he did not have his car parts, and Mr. Papenfuhs asked if anyone else could bring him to work but there was no one to do so. Claimant did not produce any records documenting any telephone calls because, he stated, his phone service had been disconnected.

Claimant acknowledged that he understood his absences were not approved. He admitted that other than the text on June 18, 2012 and the purported contact on June 20, 2012, he did not talk to anyone at the Carrier because, he maintained, he had no phone numbers for anyone else to contact. He stated that he returned to work on June 25, 2012, at which time he was issued the dismissal letter.

Claimant's personal record shows a 30-day record suspension assessed March 21, 2012 for absence without authorization from February 26 through 29, 2012; a 20-day record suspension assessed March 21, 2012 for absence without authorization on February 13, 14, 15, 16 and 20, 2012; a 10-day record suspension for sleeping on duty on March 30 and 31, and April 1 and 2, 2012; and a written reprimand and 10-day actual suspension for similar issues in 1999.

The Carrier states that this case is not complicated, as Claimant was absent from work without authority for six consecutive work days, June 15, 18, 19, 20, 21 and 22, 2012. The Carrier asserts that the Organization cannot dispute this fact. The Carrier notes that the record includes an e-mail exchange between Claimant and Roadmaster Papenfuhs on June 18, 2012, during which Claimant first notified the Carrier, 30 minutes before he was to begin work, that his car had broken down approximately 100 miles away, and Mr. Papenfuhs informed him his absence would be considered unapproved. The record is clear, the Carrier adds, that Claimant made no further effort to contact the Carrier and keep his supervisors apprised of his situation, nor did he present any compelling evidence at the investigation that his vehicle was inoperable.

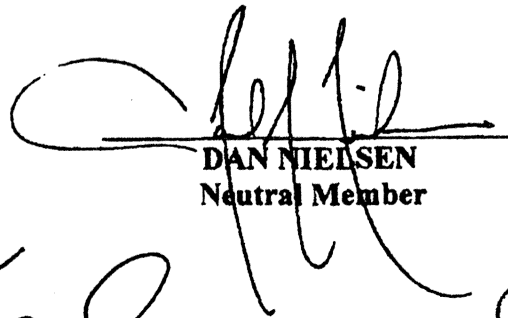
The Carrier disputes the Organization's contention that the penalty assessed was unreasonable and unwarranted, especially as Claimant has a history of attendance-related discipline. The dismissal, the Carrier asserts, is supported by the plain language of the parties' Agreement and arbitral precedent. The Carrier urges that the claim be denied.

The Organization asserts that there was no justification for the Carrier's decision to dismiss Claimant. The Organization stresses that the Carrier refused to consider the circumstances which were essential to understanding the situation in this case, and urges that the claim be sustained.

We have carefully reviewed the record in its entirety. The record demonstrates, as Claimant admitted, that Claimant was absent for more than five days without authorization. His contact with the Carrier as to the reasons for his absence were minimal and inadequate, and his explanations for his conduct were feeble. As the Carrier states, Claimant has a history of discipline for similar conduct. There is nothing in this record that would cause us to question the Carrier's decision to dismiss Claimant.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



JOY MENDEZ
Carrier Member



DAVID TANNER
Organization Member

Dated this *20th* day of *Feb*, 2014.