

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 7048

BNSF RAILWAY

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 23
NMB Case No. 106
Carrier File No. 13-08-0022
Organization File No. F-08-14D
Claimant: M.S. Stieber

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing July 18, 2008 when Claimant, M.S. Stieber (1112143), was assessed a 20-day record suspension for a violation of Maintenance of Way Operating Rule 1.13-Reporting and Complying with Instructions. The Claimant allegedly failed to follow directions on letting his gang members leave work early; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate the Claimant with all seniority, vacation, all rights unimpaired and pay for all wage loss commencing July 18, 2008, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

Claimant Michael S. Steiber, a District Track Foreman, was issued a 20-day record suspension for violation of Maintenance of Way Operating Rule 1.13—Reporting and Complying with Instructions for allegedly failing to comply with his supervisor's verbal directive that any employees who wanted to be excused from work or leave work early must address their requests directly to the supervisor. According to the Carrier, the Claimant permitted several employees in his gang to leave early on May 13, 2008. More particularly, the Claimant was suspended for failing explicitly to tell a relief employee temporarily assigned to his crew that a request to leave early must be addressed to the supervisor. When the supervisor discovered that the temporary employee left work earlier than scheduled on Friday, May 13, 2008, the Claimant was deemed culpable for failing to explain the supervisor's directive.

The Organization grieved the imposition of discipline, contending that the Claimant had not violated any Company rule and that he had complied with his supervisor's directive not to grant permission to employees who sought to be released early. The Claimant contends that he never gave such permission. The Organization also asserted that the failure to tell the relief employee on Monday that he must bring his request to leave early on Friday did not warrant the discipline imposed.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was submitted for adjudication to Public Law Board 7048.

FINDINGS AND DECISION

Public Law Board No. 7048 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

The Claimant readily admitted that he did not explicitly advise the relief employee who told him that he wanted to leave early on the following Friday that he must obtain permission to leave early directly from the Roadmaster or Assistant Roadmaster. However, neither did the Claimant grant permission for the employees under his supervision to leave early in contravention of the Roadmaster's order. At worst, the Claimant was negligent in not interrupting the task in which he was engaged on Monday when the relief employee casually communicated his desire to leave work early on the following Friday. The evidentiary record does not establish that any formal request to leave was ever addressed to the Claimant. Thus, he never intentionally granted permission to leave work. As the Claimant testified, granting such permission would have

been a violation of the unequivocal directive he had been given by his supervisor. By not granting such permission, the Claimant felt he was complying fully with his supervisor's directive.

A 20-day record suspension was imposed on the Claimant not for any affirmative act of misconduct, but for failing to advise the relief employee on Monday that he must obtain permission to leave early directly from the Roadmaster. The Claimant is not entirely blameless, as he might have averted the early departure and subsequent discipline imposed on the relief employee who left work early by communicating the supervisor's policy more clearly. The Carrier has not established, however, that but for the Claimant's failure to speak, the relief employee would have followed the proper procedure as established by the Roadmaster.

The Claimant's failure affirmatively to advise the employee of the procedure in effect at the time imposed some culpability upon the Claimant. He has not, however, committed an infraction of Maintenance of Way Rule 1.23 sufficient to justify a 20-day record suspension. At most, a ten-day record suspension, which will adequately communicate the action that the Claimant should have taken is the maximum reasonable penalty that may be imposed under the circumstances

underlying the instant case. Consequently, substantial reduction of the penalty imposed is mandated.

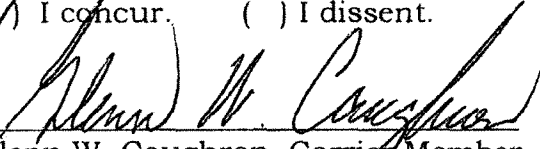
Furthermore, the Organization's contention that no discipline may be imposed because the investigation of the Claimant's offense was not conducted promptly cannot be sustained. Although the thirty-six day interval between the Claimant's testimony in the investigation concerning the relief employee for leaving early and the investigation of the Claimant's conduct triggered by that testimony is longer than ideal, this delay is not fatal to the imposition of reasonable discipline.

Based on the evidence submitted, the instant claim is sustained in part. The 20-day record suspension shall be reduced to a 10-day record suspension, and the Claimant's record shall be amended to reflect the reduction in penalty. We so find.


Daniel F. Breht, Impartial Chair

Dated: September 17, 2009

(☒) I concur. () I dissent.


Glenn W. Caughron, Carrier Member

Dated: *October 14, 2009*

(☒) I concur. () I dissent.



David Tanner, Organization Member

Dated: 9/30/09