

**PUBLIC LAW BOARD NO. 5850**

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**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY**

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Case No. 451 – Award No. 451 – Claimant: Flores  
Carrier File No. 14-13-0253  
Organization File No. 180-SF13A1-138

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**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing April 16, 2013, when Claimant, Angel C. Flores (1614676), was disciplined with a Standard 10-day Record Suspension for his alleged failure to report for duty to the Maintenance of Way building at 1955 East Anderson, Stockton, California on March 19, 2013 at 2100 hours. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.15 Duty—Reporting or Absence.
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, if applicable, with seniority, vacation, all rights unimpaired and wage loss commencing April 16, 2013, and 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, A.C. Flores, has been employed by the Carrier since 2004. On March 26, 2013, the Carrier notified Claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged failure to report for duty to the Maintenance of Way building in Stockton,

California on March 19, 2013 at 2100 hours. The notice stated that the investigation would determine possible violation of MOWOR 1.15—Duty—Reporting or Absence. Following the investigation, the Carrier found that Claimant had violated this Carrier rule as alleged, and assessed him a Standard 10-day record suspension with a one-year review period.

**MOWOR 1.15 Duty—Reporting or Absence**, provides, in relevant part:

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.

Carrier Assistant Roadmaster Adam Sorensen testified at the investigation that Claimant, a machine operator who worked as a night supervisor on the RCO gang, had become one of his direct reports approximately two weeks before the incident at issue. Mr. Sorensen stated that on March 19, 2013, Claimant's crew had been instructed to report to duty at Stockton, California at 2100 hours. Mr. Sorensen explained that he received a call from the Track Supervisor informing him that all of the employees had reported for duty, but Claimant had not. About an hour later, Mr. Sorensen continued, Claimant called and informed him that he had overslept. By then, Mr. Sorensen had obtained a replacement so he told Claimant not to come in.

The record includes a letter to Claimant from his previous supervisor, dated November 30, 2012. The letter states that it is to serve as "notice of (Claimant's) failure to perform the duties and obligations of (his) position," and notes that he had been absent without permission on November 28, 2012. The letter details Claimant's history of unexcused absences, and states that any future failure by Claimant to contact his supervisor and obtain permission prior to being absent, or other excessive absenteeism, would result in discipline. The letter also instructed Claimant to contact the individual who issued the letter, or the exempt supervisor, rather than the foreman, to secure prior permission for any absence. Claimant signed the document, indicating that he understood and agreed with the notice contained therein. Mr. Sorensen stated that when Claimant came to work for him they met and discussed these matters.

Claimant testified at the investigation that on or about March 16, 2013, he requested the evening of March 21 into March 22 off. He stated that Track Supervisor Victor Mangoni had granted the request, but Mr. Mangoni and Mr. Sorensen later told him that any days off had to be granted by the Division Engineer, so his request for a vacation day was denied. Claimant explained that the situation caused him stress and he had difficulty sleeping, so he took an anxiety medication, which caused him to oversleep.

Claimant also stated that the week of the incident was only his second working nights and he was still adjusting to the schedule.

Claimant acknowledged that, on March 19, 2013, he did not contact Mr. Mangoni and Mr. Sorensen until approximately an hour after he had been scheduled to appear for work. He added that he went to the doctor to obtain another medication that would cause less drowsiness, and brought a note to Mr. Sorensen the day after the incident. The record includes a form from Stockton Urgent Care, dated March 20, 2013, with a box checked indicating that Claimant was to be excused from work on March 19, 2013, and another form, dated March 21, 2013, stating that Claimant had been seen on March 20, 2013 for a change in prescription to make him less drowsy.

Claimant's personal record shows a 30 day record suspension, with a 36-month review period, issued in 2009 for failure to protect his assignment and a formal reprimand issued on May 2, 2013, for being absent without authorization on February 24, 2013.

The Carrier states that the case is not complicated, as Claimant admitted that he failed to report to work on March 19, 2013, and failed to call his Roadmaster for permission to be absent, prior to his shift's start. This is a clear violation of MOWOR 1.15, the Carrier asserts, and, as is well-settled, Claimant's admission is sufficient for the Carrier to meet its burden of proof. The penalty, the Carrier continues, was issued in accordance with its Policy for Employee Performance Accountability (PEPA) and Claimant's personal record, and the record establishes that Claimant has a history of absenteeism. The Carrier urges that the claim be denied.

The Organization asserts that the Carrier failed to consider the circumstances surrounding the incident at issue and, throughout the processing of the alleged violation, treated Claimant with contempt. Claimant, the Organization states, provided reasonable explanations for the situation and so notified his supervisor in a timely manner, and the Carrier has failed to meet its burden of proof. Even if it had, the discipline is excessive to the point of harassment, the Organization maintains. The Organization urges that the claim be denied.

We have carefully reviewed the record in its entirety. There is no dispute that Claimant, as charged, did not appear for work on March 19, 2013, nor did he obtain prior approval for the absence. His purported medical documentation is vague and provides nothing to explain or justify Claimant's action.

As the Carrier asserts, Claimant's conduct is a clear violation of MOWOR 1.15 Duty—Reporting or Absence. Claimant and the Organization attempt to justify his conduct on the basis that he was under stress, requiring him to take medication, because the Carrier had placed stringent conditions upon approval of his leave requests. However, the record clearly shows that the Carrier took this action because Claimant had an extensive record of absenteeism, including another incident shortly before this one. Moreover, the Carrier gave him clear notice that he would face discipline unless his behavior improved. There was nothing to justify Claimant's Rule violation, and his guilt has been proven by substantial evidence. The discipline assessed cannot be considered

unreasonable or arbitrary under the circumstances, which include Claimant's history of absenteeism. The claim will therefore be denied.

**AWARD**

**Claim denied.**

  
**DAN NIELSEN**  
Neutral Member

  
**JOY MENDEZ**  
Carrier Member

  
**DAVID SCOVILLE**  
Organization Member

Dated this 31<sup>st</sup> day of October, 2014.