

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 491 – Award No. 491 – Becenti
Carrier File No. 14-15-0118
Organization File No. 2400-SF13A1-1430

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 6, 2015 when Claimant, Steven P. Becenti (6596571), was disciplined with a Level S 30-day Record Suspension with a 3-year review period for his alleged failure to report for duty on Tuesday November 11, 2014 continuing through November 17, 2014 without approval, while assigned as a laborer on the RG402 support gang. 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 Claimant's record this discipline and paid for all wage commencing February 6, 2015, 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, Steven P. Becenti, has been employed by the Carrier since 1994. On November 19, 2014, the Carrier notified Claimant to attend an investigation to ascertain the facts and determine his responsibility, if any, in connection with his alleged failure to report for duty on Tuesday November 11, 2014 continuing through November 17, 2014

without approval, while assigned as a laborer on the RG 402 support gang. Following the investigation, the Carrier found that Claimant had committed the misconduct alleged, in violation of MOWOR 1.15 Duty Reporting or Absence, and assessed him a Level S 30 Day Record Suspension.

The facts of this case are not in dispute. At the time at issue, Claimant was working as a Trackman out of Albuquerque, New Mexico. Assistant Roadmaster Jeremy Francisco testified at the investigation that his Foreman, Chris Gonzalez, informed him that an employee, Claimant, was to bump onto their gang on November 10, 2014, but needed to work out some arrangements and would not arrive until November 11, 2014. A few days later, he stated, the Foreman told him Claimant had not appeared, and he was concerned that something might be wrong. Mr. Francisco checked with Carrier Manpower to make sure Claimant was not working in another location, and they determined that was not the case. They contacted members of Claimant's previous gang, but no one had talked to him since he left. The supervisors also contacted the Albuquerque Police Department to perform a wellness check on Claimant.

Mr. Francisco stated that on November 18, 2014 Claimant left a message on Foreman Gonzalez' voicemail. That, he explained, was their first contact with Claimant.

Claimant testified at the investigation that as he was preparing to join the gang a close friend of his was killed in a car accident. He explained that he felt guilty about it, because the friend was driving a long distance, and he told him to call Claimant if there were any problems, but Claimant did not answer his phone on the night of the accident.

Claimant stated that he lost his equilibrium and apparently began drinking, until he finally called the Carrier's Employee Assistance Program (EAP) and sent him for help. He added that he had been attending meetings and getting other assistance since, and that the EAP had helped him deal with the tragedy.

Claimant admitted that he did not report for work November 11, 2014 and that he made no attempt to contact the Carrier thereafter. Claimant also acknowledged that he had absenteeism problems in the past.

Claimant's personal record shows a Level S record suspension, with a 12-month review period, assessed on April 16, 2014 for absence without authority, and a similar violation in 2008.

The Carrier asserts that this case is not complicated. The record shows that Claimant told his Foreman he would report on November 11, 2014, but failed to come to work for days. The Carrier points out that after it attempted to determine if he was working elsewhere and contacted the police to make sure Claimant was safe, Claimant finally left Foreman Gonzalez a voicemail on November 18, 2014.

Although the Organization contends that Claimant was suffering from a serious medical condition, the Carrier states that its employees must report such problems to the

Carrier, not simply fail to appear. The Carrier notes that Claimant's admission that he starting drinking and did not contact the Employee Assistance Program (EAP) until November 21, 2014 are not legitimate excuses for his absence. The Carrier adds that Claimant admitted to having had absenteeism problems in the past, which his personal record confirms. It is well established, the Carrier points out, that admissions such as Claimant's are sufficient to satisfy its burden of proof.

With respect to the penalty, the Carrier notes that, pursuant to its Policy for Employee Performance Accountability (PEPA), this level of absenteeism is a stand-alone dismissible offense. In addition, this was Claimant's second Level S violation within a review period, which also subjects him to dismissal, so the Carrier has already shown leniency. The penalty was not arbitrary or excessive, and should not be disturbed by this Board.

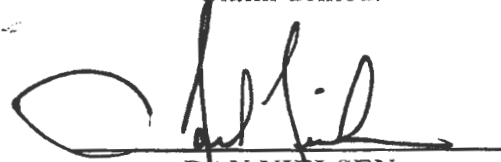
The Organization asserts that factors beyond Claimant's control led to this incident. Claimant was suffering from a serious medical condition and should have received help from the Carrier before it got to this point.

The Organization urges that the Carrier failed to prove that Claimant engaged in any misconduct. Even if it had, the penalty is extreme, unwarranted and unjustified.

We have carefully reviewed the record in its entirety. The facts of this case are not in dispute, and Claimant clearly failed to report, without authorization, as alleged. The Carrier showed concern for his personal situation, but it cannot operate if employees fail to even notify their supervisors that they will not be at work. Claimant is guilty of the violation alleged, and, given his conduct and the fact that his personal record shows a similar violation only months earlier, we cannot say that the penalty assessed is excessive or arbitrary.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



MICHELLE McBRIDE
Carrier Member



DAVID SCOVILLE
Organization Member

Dated this 21 day of August, 2017.