

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 512 – Award No. 512 – D. Benally

Carrier File No. 14-19-0043

Organization File No. 2417-BN40A1-1824

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Dyson Benally Emp ID 0267260, Seniority Date 04-04-2014 for the removal of the claimants Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimants record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).

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, D. Benally, has been employed by the Carrier since 2014. On December 19, 2018, following an investigation, the Carrier found Claimant guilty of failure to report for duty at the designated time and place on October 1 through October 4, 2018 while working as a Sectionman on TPRX0014. The Carrier assessed him a Standard Formal Reprimand with a one-year review period.

The facts of this case are not in dispute. Claimant acknowledged at the investigation that he had been absent from work from October 1 through October 4, 2018. For October 1 and 2, 2018, at approximately 4:30 a.m. for a 6 a.m. briefing, he sent his supervisor, Roadmaster Nelligan, a text message stating that he would not be at work that day or the next because he had car trouble

and was being evicted from his home. Mr. Nelligan stated at the investigation that he deemed these absences unexcused.

Claimant acknowledged that he did not contact Mr. Nelligan concerning the two days thereafter. Mr. Nelligan considered him absent without official leave (AWOL). Claimant contended at the investigation that he had contacted his then-foreman, Logan Beck. At the hearing, Mr. Beck recalled that Claimant had called him about car issues and other personal matters, but stated that Claimant had not called to let him know that he not be in for work.


Carrier Engineering Instruction (EI) G.4 states that if an employee needs to be absent from work, he is to contact his supervisor or foreman. Providing such notice does not necessarily mean that the requested absence will be approved; that is a matter of supervisor discretion. For unexcused absence, EI G.4 provides that the first unexcused absence will result in counseling and a second subjects the employee to a formal investigation and possible discipline. The decision to record an absence as approved or unapproved is at the supervisor's discretion, and on October 1st and 2nd, Roadmaster Nelligan determined that Claimant's requested absence did not meet his criteria for an approved absence. Mr. Nelligan testified that Claimant had also been absent about a week earlier and he issued him a coaching and counseling letter for unexcused absence.

Roadmaster Nelligan had counseled Claimant for an earlier unapproved absence shortly before the instant incident, so, according to EI G.4, Claimant was properly subjected to this formal investigation. The record clearly establishes, as the Carrier asserts, that Claimant failed to report to work on October 1 and 2, 2018, notifying his supervisor approximately 1½ hours before he was to participate in the briefing. His supervisor exercised his discretion and deemed those absences unexcused. The record also demonstrates that Claimant also failed to report on October 3, and 4, 2018, and did not notify supervision, in clear violation of the applicable rule. The Carrier has proven Claimant's guilt by substantial evidence.

As for the penalty, the Organization's assertion that the discipline is excessive and unwarranted is without merit. According to the Carrier's Policy for Employee Performance Accountability (PEPA), an unauthorized absence is classified as a serious violation, and at the time of this incident Claimant was in a 36-month review period on a Level S 30-day record suspension issued on March 30, 2016 for another unauthorized absence violation. Under the PEPA, a second such violation can subject an employee to dismissal. As the Carrier states, the formal reprimand issued here was a lenient form of discipline. We see no reason to overturn it.

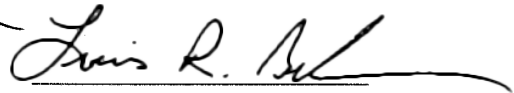
AWARD

Claim denied.



DAN NIELSEN
Neutral Member

SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.