

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 557 – Award No. 557 – J. Chastain
Carrier File No. 14-21-0088
Organization File No. 2405-SL13A1-2105

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Joshua Chastain (0280503) Seniority date April 7, 2014, for the reinstatement with seniority, medical benefits, vacation, all rights unimpaired and pay for all wage loss including any overtime hours commencing on March 8, 2021, 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, J. Chastain, had been employed by the Carrier since 2014. On March 8, 2021, following an investigation, the Carrier found Claimant guilty of failing to report for duty and failing to notify his supervisor on February 9, 2021, and February 10, 2021. The Carrier found that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.15 Duty—Reporting or Absence, and dismissed him from service.

At all times relevant, Claimant was working as a Welder on gang TRWX1283 out of Newton, Kansas. On February 9, 2021, Claimant was supposed to report for duty in Newton, Kansas, at 0700 hours. Roadmaster Kyle Jacobs testified that he conducted the briefing at the jobsite that morning at 0700 and Claimant was not present. He waited until about 8:00 a.m. and then called Claimant, but Claimant did not answer. He again tried to call Claimant at 12:55 p.m. but there was no answer. At the end of the day, he confirmed with the other workers and Claimant's welding partner that no one had seen Claimant at the worksite that day.

Mr. Jacobs further testified that Claimant was scheduled to report again at 0700 on February 10, 2021. He tried to call Claimant at 8:06 a.m. but there was no answer. Mr. Jacobs continued to check with the work groups at the site, but no one had seen Claimant. Mr. Jacobs introduced telephone records showing the calls to Claimant's number.

Mr. Jacobs testified that he had no notice that Claimant would be off. He did not receive a response to his calls over those two days.

Claimant testified that he was supposed to report to the jobsite at 0700 on February 9, 2021, and February 10, 2021, but he did not. He stated that he did not contact Mr. Jacobs on February 9 or 10, 2021, but thought he had mentioned the week before that his children would be out of school and that he would need a couple of days off. Claimant admitted that he was not in compliance with MOWOR 1.15 on February 9, 2021 or February 10, 2021.

Claimant further testified that the phone calls on the records Mr. Jacobs provided did not appear on Claimant's phone bills. However, Claimant did not produce his telephone records at the hearing.

Claimant previously received a Level-S 30-day Record Suspension with a one-year review period on October 5, 2020, for failing to report for duty on September 18, 2020 and for reporting two hours late to his designated worksite and failing to notify his supervisor on September 21, 2020.

The Carrier asserts that it has provided substantial evidence proving Claimant violated MOWOR 1.15, as the facts are clear. Claimant admitted that he failed to report for duty on the dates in question and failed to notify Mr. Jacobs, his supervisor, that he would be absent. He also failed to respond to his supervisor's attempts to contact him. He simply failed to report to work, with no communication to his supervisors for two days. It is well recognized that an admission of guilt is sufficient to meet the Carrier's burden of proving guilt by substantial evidence.

With respect to the penalty, the Carrier notes that Claimant was within the review period for a similar violation. He has demonstrated a pattern of misconduct and is indifferent to complying with the rules. In addition, the Carrier states, numerous arbitral decisions have upheld serious discipline for employees who fail to report for work at the designated time and place, especially when they fail to contact their supervisor as required. The Organization's arguments amount to a request for leniency. Therefore, the Carrier states, Claimant's dismissal was warranted, and his claim should be denied.

The Organization argues that although Claimant admitted to violating MOWOR 1.15, Claimant believed he had notified Mr. Jacobs the week before that he would need time off while his children were out of school, as he had no one else to watch them. As such, the Organization asserts that Claimant's dismissal is excessive and unwarranted and requests that Claimant be reinstated and made whole.

This is the first of three claims before this Board for the same Claimant regarding almost identical violations. There is no dispute that Claimant committed the violation alleged, as he

admitted having done so. He specifically acknowledged having violated MOWOR 1.15. The Carrier has proven Claimant's guilt by substantial evidence.

With respect to the penalty, the Organization's assertion that the discipline is excessive and unwarranted might have more persuasive force if this was an isolated incident. This, however, is no aberration. As noted, we have three almost identical cases involving Claimant, all occurring within one month, and all falling within a review period for a prior similar offense.

It is undisputed that Claimant failed to report for work on the days in question, and his contention that he might have earlier mentioned needing a couple of days off, even if true, he clearly did not have an excused absence and his failure to respond to attempts to reach him is inexcusable. As the Carrier states, the Organization's arguments amount to a request for leniency which, it is well established, is the province of the Carrier, not this Board.

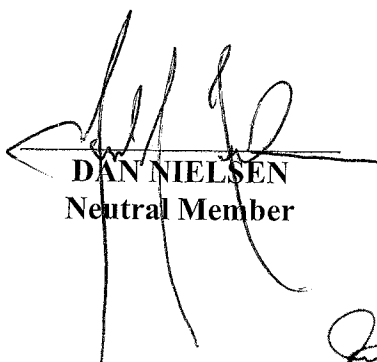
According to the Carrier's Policy for Employee Performance Accountability (PEPA), an unauthorized absence is classified as a serious violation, and at the time of this incident Claimant was in a 12-month review period on a Level S 30-day record suspension issued on October 5, 2020 for another unauthorized absence violation. As the Carrier points out, the PEPA states clearly that employees committing an additional serious rule violation within a review period may be subject to dismissal. Given that Claimant committed this offense less than six months after receiving discipline for the same infraction, we cannot find the penalty here excessive, arbitrary, or unwarranted.

AWARD


Claim denied.



JOE HEENAN
Carrier Member



DAN NIELSEN
Neutral Member


JEFFERY L. FRY
Organization Member

Dated this 30th day of March 2025.