

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 559 – Award No. 559 – J. Chastain
Carrier File No. 14-21-0126
Organization File No. 2405-SL13A1-2108

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 April 1, 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 April 1, 2021, following an investigation, the Carrier found Claimant guilty of failing to report for duty and failing to notify his supervisor on March 2, 2021, and March 3, 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 March 2, 2021, Claimant was supposed to report for duty in Newton, Kansas, at 0700 hours. Roadmaster Kyle Jacobs testified that he conducted the morning briefing at 0700 and was notified by the work group that Claimant had not arrived. Mr. Jacobs attempted to call Claimant at 8:25 a.m. but there was no answer. Mr. Jacobs also checked with the work groups throughout the day, none of whom had heard from nor seen Claimant. On March 3, 2021, Mr. Jacobs again conducted the morning briefing at 0700 and Claimant was not present. Mr. Jacobs

testified that he received a phone call from Claimant at about 1:28 p.m., during which Claimant asked what he could do to save his job and continue working. Mr. Jacobs explained that Claimant needed to show up to the worksite as required and recommended that Claimant contact the Carrier's Employee Assistance Program (EAP) about the issues at home preventing him from reporting to work. Mr. Jacobs provided phone call logs supporting his testimony. However, Claimant did not appear at the investigation.

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. On March 8, 2021, he was dismissed for failing to report for duty and failing to notify his supervisor on February 9, 2021 and February 10, 2021.

The Carrier asserts that Claimant was given proper notice of the investigation under Carrier Rules, but he willingly chose not to attend the investigation. The Carrier further contends that Claimant was aware that he was required to report for duty on March 2, 2021 and March 3, 2021, yet he did not bother to communicate with his supervisor about his absence. Even after Roadmaster Jacobs attempted to call Claimant, Claimant did not respond. Claimant has a pattern of this same violation on multiple dates and this violation occurred during an active review period. Therefore, dismissal was warranted and the claim should be denied.

The Organization argues that the Carrier failed to afford Claimant an opportunity to explain the incident when it proceeded with the investigation despite Claimant's absence and over the Organization's objections. As such, the Organization believes Claimant's discipline is excessive and unwarranted and asks that Claimant be reinstated and made whole.

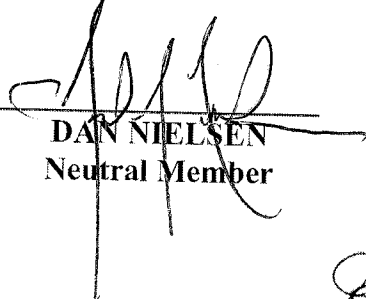
This is the third of three claims before this Board for the same Claimant regarding almost identical violations. As noted in Case Nos. 557 and 558, the Organization's assertion that the discipline is excessive and unwarranted is without merit. As this marks Claimant's third serious violation within an active review period for a similar offense, we see no reason to disturb the Carrier's penalty.

AWARD

Claim denied.



JOE HEENAN
Carrier Member



DAN NIELSEN
Neutral Member


JEFFERY L. FRY
Organization Member

Dated this 30th day of March 2025.