

PUBLIC LAW BOARD NO. 5850

Case No. /Award No. 573
Carrier File No.: 14-22-0018
Organization File No.: 2418-SL13D3-2104
Claimant: A. Flores

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

STATEMENT OF CLAIM:

We Present the following claim on behalf of Angel Flores, Emp ID 1614676, for the removal of the Claimant's Dismissal for Violation of MWOR 1.15 Duty-Reporting or Absence and Engineering Instructions G.4. We request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's actions.

CARRIER POSITION:

During the week beginning on September 13, 2021 and extending to September 17, 2021, Claimant did not report for service and did not inform a supervisor of his absence. In the Carrier's assessment, this clearly placed him in violation of MWOR 1.15 and EI G.4.

Supervisor T. Utu informed his team that Assistant Roadmaster J. Cook would be covering as the supervisor for his team while he was out. Claimant admitted during the Investigation that he did not try to find out who was covering for Utu or who he should contact regarding his absence:

Dave Bradford: Mr. Flores, at the time that you knew that Utu was gone and that you were not gonna be at work on the 13th, did you call anybody to get and see who was covering for Mr. Utu and/or to get uh the Division Engineer's number to call them and explain what was going on?

Angel Flores: Uh, no, I did not.

Claimant admitted he did not report for work that week:

Dave Bradford: Okay. So you did not show report to work as intended on the 13th.

Angel Flores: Through the 17th, no, I did not.

The Carrier points out that multiple times during the investigation hearing, Claimant admitted he did not inform a supervisor of his absence and admitted this was not in compliance with EI G.4:

Dave Bradford: Just to reiterate, from the 13th through the 17th, did you talk to any officer?

Angel Flores: No.

MWOR 1.15 outlines Claimant's duty with respect to reporting for work:

1.15 Duty - Reporting or Absence

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.

Not only did the Claimant fail to report to work for an entire week, he failed to report his absence to a supervisor. This is what is colloquially known as a "no call/no show" and is addressed in EI G.4, which states as follows:

EI G.4 BNSF Absenteeism Notification and Layoff Policy

Manpower Planners do not authorize work absences. If an employee needs to be absent from work, that employee's primary contact for notification and absence approval should be the Exempt Supervisor in charge. It is preferred that the employee requesting the absence approval contact the Exempt Supervisor before the start of the shift to have a voice to voice discussion of the matter. If direct conversation by telephone to the Exempt Supervisor is unsuccessful, a text

message, e-mail, or voice mail in advance of the start of shift to the Exempt Supervisor may be considered sufficient notification of the absence. The Supervisor will then notify the Manpower Planner of the absence if the position needs to be filled.

Note: An employee notice to their Exempt Supervisor about work absence does not necessarily “Approve” the absence. Time entries of Approved or Unapproved absence will be left to the Supervisor’s discretion. Supervisors will review the employee’s work history and will address systemic patterns of absenteeism.

The Policy for handling unexcused absences or tardiness is as follows:

1. First violation will result in the Exempt Supervisor counseling the employee concerning the rules involved.
2. Any subsequent violation(s) of these rules will result in scheduling a Formal Investigation with the appropriate disciplinary action being taken, according to the appropriate Collective Bargaining Agreement(s).

The Carrier explains that the language relied on by the Organization applies specifically to instances where the employee has a single absence or instance of tardiness and that absence has not been approved or excused. The Carrier distinguishes the situation where an employee is AWOL for an entire work week.

Section IV(D)(1)(h) of the Policy establishes that Claimant’s actions constituted a dismissible violation: “Stand-Alone Dismissible Violations include, but are not limited to: h. Unauthorized absence (AWOL) of five or more consecutive days.” Given this plain language, the Carrier sees the Organization’s position as a request for leniency. It contends leniency falls within the purview of the Carrier, not the Board.

Track supervisors are not exempt. The Organization provided no evidence that Claimant contacted any officer at BNSF in relation to his suspicion that he may have had COVID-19 during the period of his absence. It finds Claimant in a glaring violation of the rules, and insists his no call/no show offense properly resulted in dismissal.

ORGANIZATION POSITION:

At no time did the Carrier counsel Claimant as required by E1 G4. During the week of September 13, 2021 through September 17, 2021, Claimant’s supervisor, Roadmaster T. Utu, was on vacation. Claimant did not know who was covering for his supervisor. He let co-worker J. Allen know he would not be coming to work, and also notified a Track Supervisor. Claimant believed he was suffering from COVID-19 like symptoms. As a result, he was obligated to self-quarantine away from work. With the pandemic of Covid-19, with all of the changing of restrictions, protocols, mandates, guidelines, and the Carrier’s inability to follow its own policies, the Organization contends Claimant has been wronged.

DECISION:

Prior to leaving for vacation, Supervisor Utu informed his team that he was going to be on vacation. Utu also informed his team that Assistant Roadmaster J. Cook would be covering as the supervisor for his team. According to testimony at the investigation hearing, Cook wrote his number on a board in a public area for the team.

Claimant admitted he knew Utu was on vacation. If Claimant was unclear about how to report his absence, it was his obligation to ask and find out. Instead, he was a no call/no show for fully five consecutive days. We do not find alleged confusion about reporting absences to be a creditable reason for Claimant's failure to advise his acting supervisor that he was not coming to work. The obligation to notify supervision of absences is well established, and the Carrier was within its rights to expect Claimant to comply.

AWARD:

The claim is denied.

Dated: January 7, 2024



Patricia T. Bittel, Neutral Member



Jeffery L. Fry, Labor Member



Logan McKenna, Carrier Member