

PUBLIC LAW BOARD NO. 5850

Case No. /Award No. 576
Carrier File No.: 14-22-0028
Organization File No.: 2418-SL13S1-2130
Claimant: T. Mesa

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

STATEMENT OF CLAIM:

We Present the following claim on behalf of Tony Mesa, Emp ID 6575138, for the removal of the Claimant's discipline for Violation of MWOR 1.15 Duty-Reporting or Absence. 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 actions.

CARRIER POSITION:

Claimant, a Trackman on the Needles Subdivision, failed to report for duty at the designated time and location on December 1, 2021. As a result, he was issued a Record Suspension with a one-year review period for failure to report to work. The Carrier maintains he admitted his failure to notify Roadmaster Martinez of the absence, arguing this placed him in violation of MWOR 1.15 and EI G.4.

The Carrier explains that the offense known as 'no call/no show' constitutes a serious breach of duty because the employer is deprived of adequate notice to plan for the day's work in detriment to its operations. It contends this is especially important in BNSF's safety sensitive environment.

Martinez explained the difference between an unapproved absence and being AWOL:

Jason Martinez: approved absence, unapproved absence, and AWOL. Approved absence, being approved by the supervisor. Unapproved absence, being not approved by the supervisor. And then AWOL is you didn't show up, you didn't call uh there was nobody to approve or unapproved it. (TR 14)

The Carrier maintains Claimant admitted he was AWOL during the Investigation:

Tony Mesa: Yeah. I was sick that day. I didn't show up. Uh I didn't call in. Um I was puking my guts out and everything and I didn't feel good. And I just I was sick. I was throwing up and everything else. (TR 17)

Tony Mesa: Uh actually, I was sick that day. No, I didn't call or anything. Yeah uh yeah, I was AWOL. (TR 19)

According to the Carrier, the requirement of counseling an employee only exists for an unapproved absence; it does not apply to situations where the employee has been AWOL. Insofar as Claimant was AWOL, the Carrier concludes he was not eligible for counseling and the 30-day Record Suspension with a 12-month Review Period was proper.

ORGANIZATION POSITION:

The Organization maintains that MOWOR 1.15 makes no mention of the term "AWOL." Claimant testified that he was sick and forgot to call in. As the Organization sees it, this absence must be deemed unexcused. Under Engineering Instruction G4, after the first instance of an unexcused absence, an employee is to be counselled. The Organization notes that Claimant received no such counselling, and concludes the Company is in violation of its own policy. As a result, it argues that the discipline must be overturned.

DECISION:

Maintenance of Way Operating Rule 1.15 Duty- Reporting or Absence states as follows:

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.

Engineering Instruction G4 states as follows:

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 language of these rules makes it clear that there are two steps to getting an approved absence: notification and approval. Notification allows the Carrier to plan its manpower around the fact that the employee will not be working. Approval is separate, and involves supervisory discretion as to whether or not the reason given for the absence warrants it being considered as legitimate.

The Carrier's Employee Performance Accountability Policy states as follows in pertinent part:

IV. Policy Requirements. * * *

C. Serious Violations (Level S)

1. Serious violations include but are not limited to: * * *
 - d. An unauthorized absence (AWOL). * * *

D. Stand-Along Dismissible Violations

1. Stand-Along Dismissible Violations include but are not limited to: * * *
 - h. Unauthorized absence (AWOL) of five or more consecutive days.

Under PEPA, a failure of notification is categorized differently than an unapproved absence. The Carrier's offered rationale for this distinction makes sense: the employer is deprived of the opportunity to plan its manpower when the employee fails to notify of absence.

When an employee notifies supervision of an absence, this does not mean the absence will be approved. But when an employee fails to notify supervision of an absence at all, that employee is


AWOL, or a 'no call/no show.' Though hypothetically there could be exigent reasons for a 'no call/no show,' (such as having a major heart attack or serious automobile accident while driving to work), the record in this case does not indicate the Claimant had such a situation. Though Claimant has testified that he was quite sick, the Board is not persuaded that a phone call or text message was impossible under the circumstances.

Had Claimant notified his supervisor of an absence which was not ultimately approved, his situation might be more compelling. But when he failed to notify his supervisor of his impending absence, he was properly considered to have committed a serious violation. Claimant's Record Suspension with a 12-month review period was a reasonable penalty for a serious violation. It follows that the Carrier's disciplinary action was justified under the circumstances.

AWARD:

The claim is denied.

Dated: January 7, 2024



Patricia T. Bittel, Neutral Member


Jeffery L Fry, Labor Member

Logan McKenna, Carrier Member