

**PUBLIC LAW BOARD NO. 5850**

**Case No. /Award No. 579**  
**Carrier File No.: 14-22-0039**  
**Organization File No.: 2417-SL13A1-2127**  
**Claimant: E Herrera**

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

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**STATEMENT OF CLAIM:**

*We Present the following claim on behalf of Eduardo Herrera, Emp ID 0281725, Seniority Date 07-29- 2014, for the removal of the claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, 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 violation, including the following compensation(s).*

**CARRIER POSITION:**

On October 29, 2021, Claimant was assigned as a Machine Operator on gang TRPX0008, reporting to Roadmaster C. Cole. Cole convened a debriefing at approximately 1730, where he informed his gang that they would be required to work mandatory overtime the following day, beginning at 0530 on Saturday, October 30, 2021.

A derailment had shut down both main tracks on the nearby Needles Subdivision. As a result, the gang's ability to obtain the necessary track windows to complete the needed repairs the following Monday and Tuesday was in doubt. Once the two mains on the Needles Subdivision reopened, trains delayed by the derailment would result in increased traffic in the area. Management determined TRPX0008 would work on October 30th to use available track windows to complete their repairs on schedule.

Claimant advised Cole that he would not be reporting for the mandatory overtime, and in fact did not show. In the Carrier's assessment, Claimant ignored Cole's instructions and simply chose not to report for work. As a result, the Carrier found him in violation of MWOR 1.13 for failure to comply with instructions.

The Carrier argues that mandatory overtime is a management prerogative that is undisturbed by any provision of the Agreement. It maintains the note in EI G.4 addresses this directly, and clearly sets forth the notion that an employee's notice to his/her Exempt Supervisor of a work absence does not mean that the absence will be approved.

### **ORGANIZATION POSITION:**

Exempt Supervisor Cole acknowledged during the Investigation that Claimant informed him at the end of shift on October 29, 2021 of his projected absence for the overtime shift October 30, 2021. Cole conceded that he knew of Claimant's anticipated absence 12 hours prior to start of shift. The BNSF Absenteeism Notification and Lay Off Policy provides as follows:

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 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.

When asked if Claimant complied with the G.4 Rule and Absentee Policy, Cole stated: "Yeah, he might he told me or mentioned that he was not going to be there. He was a little bit upset at the time."

As the Organization sees it, the transcript speaks for itself and establishes that Claimant fully complied with BNSF's own Absenteeism and Lay Off Policy. The Organization does not agree with the level of discipline levied against Claimant and characterizes the discipline of a Standard Formal Reprimand with a One (1) Year Review Period as extreme and abusive.

### **DECISION:**

Claimant's Standard Reprimand states that the discipline is being taken for his failure to comply with instructions in violation of MWOR 1.13. That provision states as follows:

#### **1.13 – Reporting and Complying with Instructions**

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

The facts of this case are not contested. Supervisor Cole instructed Claimant to appear for overtime duty. Claimant responded that he would be absent and, in fact, did not report for the duty. There is nothing in the record to indicate that the mandate to work the overtime was improper or unreasonable. There is no evidence that Claimant's nonappearance was anything but volitional. The Board can find no mitigating circumstances.

The Organization argues that Claimant's refusal to work overtime should be treated as a simple absence. We do not agree. The mandatory overtime here concerned was in response to a serious problem in keeping trains running. A refusal to work such overtime is distinguishable from and more serious than an ordinary absence.

Claimant was not charged with the more grievous offense of insubordination, indicating that the Carrier was not being arbitrary or capricious in addressing the situation. The Carrier's operations are dependent on the availability of its employees to perform needed tasks. The Carrier needs to mandate overtime to keep trains running; nothing in the parties' Agreement impinges on the managerial right to make overtime mandatory. Claimant chose to disregard his supervisor's instructions and ignore both the overtime mandate and any operational problems his absence would inflict on the Carrier. The Carrier was within its rights to discipline Claimant with a Standard Formal Reprimand.


**AWARD:**

The claim is denied.

Dated: January 7, 2024



Patricia T. Bittel, Neutral Member

  
Jeffery L Fry, Labor Member

\*\*\*\*RESERVE DISSENT



Logan McKenna, Carrier Member