

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 195, (Case No. 195)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David R. Scoville, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing May 13, 2015, when Claimant, Raymond L. Mims (1767755), was dismissed on June 8, 2015, for failure to report for duty on February 25, 26, 27 and March 2, 3, 4, 2015 while working on gang TP11. The Carrier alleged violation of Maintenance of Way Operating Rule (MWOR) 1.15 Duty Reporting or Absence.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss including overtime commencing May 13, 2015, continuing forward and/or otherwise made whole.”
(Carrier File No. 14-15-0252) (Organization File No. 90-SF13A1-157)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within all the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate that the Claimant was assigned as a Trackman, Mobile Gang TP11, on the Texas Division and it was alleged that Claimant failed to report for duty on various days. On March 6, 2015, the Claimant was directed to attend a formal Investigation on March 17, 2015, which was mutually postponed several times until May 13, 2015, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to report for duty on February 25, 26, 27 & March 2, 3, 4, 2015 while working on gang TP11. The date BNSF received first knowledge of this alleged violation is March 4, 2015.

This investigation will determine possible violation of MWOR 1.15 Duty Reporting or Absence...."

On June 8, 2015, Claimant was notified that he had been found guilty as charged and was dismissed from service.

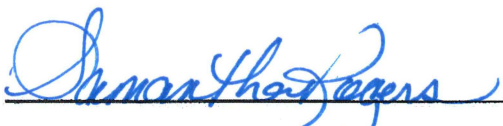
The Board notes that the instant case is a companion case to Award No. 193, Case No. 193 and Award No. 194, Case No. 194. This is the third of three cases that involve the same Claimant all of which are dismissal cases. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 193 this Board found the Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 193 cannot be overridden and the issue raised in the instant case is now moot, thus the claim is dismissed. However, we would add that a review of the transcript and record substantiated that Claimant was in violation of MWOR 1.15 and was guilty as charged.

AWARD

Claim dismissed.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 7/21/17