

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 219, (Case No. 219)**

**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 October 7, 2016, when Claimant, Daniel Candelas (0308171), was dismissed for being absent without proper authority for more than five consecutive days beginning August 15, 2016 and forward. The Carrier alleged violation of the Maintenance of Way Operating Rule 1.15 - Duty Reporting or Absence.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate Claimant, remove from the Claimant’s record this discipline with all rights unimpaired and pay for all wage loss including overtime commencing August 26, 2016, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-16-0492) (Organization File No. 2415-SL13A1-1629)**

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 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 on May 26, 2016, Claimant, Structures Mechanic, was sent a letter informing him he had been approved for a Medical Leave of Absence beginning on May 9, 2016 to June 9, 2016. On June 17th Claimant was sent a letter that extended his Medical Leave to be effective June 10, 2016 to August 9, 2016. In addition to the extension, the letter advised the Claimant that it was his responsibility to obtain an extension if needed and failure to report for duty on or before the date of expiration of the leave will subject the Claimant to consequences as outlined in the Agreement.

The Carrier did not receive any correspondence from Claimant or a request to extend his leave. On August 16, 2016, Carrier sent a letter to Claimant alerting him that his Medical Leave had expired on August 9th and the Carrier had not been furnished any information to justify the Claimant's continued absence. Carrier gave Claimant 10 days from the date of that letter to either request additional leave or return to work. The letter was available for pickup on August 19th according to the Carrier, but was not picked up by the Claimant until August 30, 2016.

Carrier did not receive a response to its letter of August 16th, therefore, on August 26, 2016, Claimant was terminated. Subsequently, Claimant requested a formal Investigation that was granted. Claimant was directed to attend a formal Investigation on September 21st which was mutually changed to September 12, 2016, concerning in pertinent part the following charge:

"...in connection with your termination of seniority and employment with BNSF in letter dated August 26, 2016 for being absent without proper authority for more than five consecutive work days beginning August 15, 2016 forward.

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

On October 7, 2016, Claimant was notified that his termination of August 26, 2016, would remain in place as it had been determined through testimony and exhibits brought forth during the Investigation that the Claimant was in violation of MWOR 1.15 Duty Reporting or Absence.

It is the position of the Organization that Carrier's letter of August 16th leniency letter extended the time period by ten days for the Claimant to furnish documentation to the Carrier that his Medical Leave of Absence should be extended. It argued that because the Claimant did not receive the letter until August 30th the same date Carrier's dismissal letter of August 26, 2016, was delivered that the ten day extension should begin on August 30, 2016. It argued that as soon as the Claimant received the extension letter request he faxed information on August 31st showing that he needed a medical extension. It reasoned that the Claimant complied with the Carrier's request for information in a timely manner and Claimant did not violate MWOR 1.15. It

concluded there was no basis for discipline and requested that the discipline be rescinded and the claim be sustained as presented.

It is the Carrier's position that on August 16, 2016, it sent a letter alerting the Claimant that his Medical Leave had expired on August 9th and that Claimant had not furnished any medical documentation to justify his continued absence. The Carrier argued that as a one-time courtesy, it gave Claimant 10 days from the date of the August 16th to either request additional leave or return to work and the Claimant did not furnish any information or return to work. It further argued that the August 16th letter was available for pickup on August 19, 2016, however, Claimant voluntarily did not retrieve the letter until August 30th, therefore, there was no reason an extension should have been granted. Carrier argued that after having proven its allegations against the Claimant it appropriately disciplined Claimant. It closed by asking that the discipline not be disturbed and the claim remain denied.

The question at issue is on what date was the August 16, 2016, leniency extension letter delivered to Claimant. The letter was properly addressed to the Claimant at P.O. Box 1202, Estancia, NM 87016. Transcript Exhibit 5A is the USPS Tracking Information for the certified letter of August 16th that indicates the aforementioned letter was delivered on August 19th to Claimant's designated mailing address which was picked up by the Claimant on August 30th. At the Investigation Claimant never suggested that the letter was untimely sent to him or that there were extenuating circumstances, medical and/or personal reasons that prohibited him from picking up the aforementioned letter before August 30th. In summary the Claimant offered no reason as to why he could not pick up the letter of August 16th after it was delivered on August 19, 2016, other than the fact that he was out of town (See page 24 of the transcript). Absent the leniency extension letter the Claimant was informed on June 17, 2016, that failure to extend his leave beyond August 9, 2016, could result in his termination. Claimant was aware of his responsibilities and the Carrier gave Claimant ample time to respond to extend his leave which he did not do. The Carrier met its burden of proof that the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately two years of service. Termination was the result of the Claimant's failure to request an extension of his Medical Leave with documentation and the subsequent dismissal confirmation after the Hearing was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

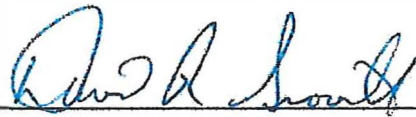
Claim denied.



William R. Miller, Chairman and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/24/18