

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 336, (Case No. 336)**

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

VS

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Members
Michelle McBride, Carrier Member
Louis R. Below, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing May 6, 2020, when Claimant Daniel Eugene Schnarr, Jr. (0071290) was assessed a Standard 10 Day Record Suspension with a One Year Review Period for being absent without authority and abandoning his position by leaving Carrier property before the end of his shift on March 13, 2020 at approximately 1403 hours in St. Louis, MO.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing May 6, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0172) (Organization File No. 0745-SL13A1-209)**

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 March 13, 2020, Claimant was working as a Welder, Position #97200, on Gang TWRX2116, with a schedule of 0700 to 1530 hours Monday through Friday. On that date Claimant was piloting the contracted weed sprayers and acting as the Employee In Charge (EIC) providing them track protection in the Lindenwood Yard. At approximately 1400

hours Division Engineer for the Heartland Division, Dennis Mendoza, arrived at the facility to discuss a matter with the Claimant. The Carrier Officer was unable to locate the Claimant and Claimant did not respond to Mr. Mendoza's call to Claimant's cell phone. It was alleged that Claimant left the Carrier property without authority and had abandoned his position and because of that Claimant was directed to attend a formal Investigation on March 26, 2020, which was mutually postponed until April 15, 2020, concerning in pertinent part the following:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged absence without authority when you abandoned your position by leaving BNSF property before the end of your shift on March 13, 2020 at approximately 1403 hours in St. Louis, Mo."

On May 6, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Standard 10 Day Record Suspension with a One Year Review Period.

It is the Organization's position that the Carrier did not provide the Claimant with a "fair and impartial" Investigation because the Claimant was not given proper notification of the Hearing and the Hearing Officer had pre-judged the Claimant which was evident by redundant questions that were aimed at trying to get the Claimant to change his rendition of the incident under charge. A tactic according to the Organization was to no avail. It asks that the claim be denied without reviewing the merits.

Regarding the merits the Organization argued the Claimant provided protection for a weed spray truck operating in the Lindenwood Yard as instructed using his personal vehicle as agreed to by the Claimant and Carrier. It argued that shortly before 1400, the truck ran out of weed spray. Claimant instructed the spray truck to return to Fenton to refill with water and mix more product. Claimant informed the Lindenwood Yardmaster of his intentions advising the Yardmaster they were clear of the Yard. Claimant further instructed the spray truck operator to refill the tank then spray the material yard near the Fenton tool house. According to the Claimant, refilling the spray truck was about a 45 minute job. During that time period, Claimant observed a mandatory lunch break, filled his personal vehicle with gas and proceeded to Choteau Yard to inspect for future possible work locations that did not involve occupying any tracks. The travel time to Choteau Yard was ten minutes plus after which he spent time examining the Yard and then a 20 plus minute drive back to Fenton to locate the weed sprayers. Upon returning to the Material Yard in Fenton (away from the depot) the spray truck was nowhere in sight. Claimant waited at the Material Yard for the spray truck until the end of his shift and then left work and only later did the Claimant notice a voice mail left by his Supervisor. It concluded that the Carrier did not meet its burden of proof as it provided nothing to rebut the Claimant's version of what

transpired on March 13, 2020. It concluded that the record shows that Mendoza did not arrive at the Lindenwood Yard until after the Claimant had departed to do other duties and then go to the Fenton Yard, therefore, it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier there were no procedural violations. It argued that the Notice of Investigation was delivered to Claimant's address on file in compliance with the Agreement. It further pointed out that the parties mutually agreed to a postponement which gave Claimant ample time to prepare. Lastly, it argued that when the Hearing Officer asked additional questions that were similar it was for clarification purposes and was no different than some of the repeated questions asked by the Organization. It asked that the Organization's procedural arguments be rejected and the claim be addressed on its merits.

Turning to the record the Carrier argued that Supervisor Mendoza went to the Lindenwood Yard for a "face to face" discussion with the Claimant and when Mendoza arrived the Claimant and the spray truck were not at the Yard. Mendoza stated he left a voice mail for the Claimant, (verified by Claimant's cell phone log) but wasn't successful in talking to the Claimant. Mendoza also testified on Pages 59 and 60 of the Transcript that the Trainmaster and Yardmaster at Lindenwood Yard advised him that the Claimant never told them they were done spraying the designated tracks despite the fact they were holding trains off of those tracks which slowed down the switching process. Additionally, the Carrier argued that the Spray Truck Operator/Contractor advised the Carrier it was relieved from duty at 1430 hours, March 13, 2020. The Carrier concluded that Claimant was guilty as charged and appropriately disciplined. It asked that the discipline not be disturbed and the claim remain denied.

This is a companion case to Award No. 344 and is the first of two discipline cases involving the same Claimant.

The Board has thoroughly reviewed the transcript and record of evidence and is not persuaded by the Organization's procedural arguments. The case will be resolved on its merits.

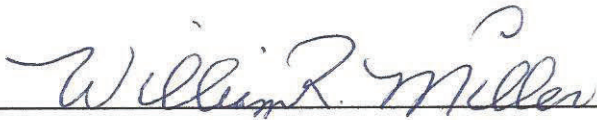
The Organization argued that the facts show that this was a case wherein the Claimant and Supervisor Mendoza inadvertently missed one another as they were at different locations because the Claimant was working at multiple sites doing different tasks. At first blush that argument is plausible, however, that argument fails because the Spray Truck Operator advised the Carrier he was relieved from duty at 1430. The Organization argued that the outside contractor's statement should not be given much credit as it may have been trying to please the Carrier to insure further work. That argument is not persuasive as there is nothing in the record to suggest that the contractor had anything to gain by being less than forthright. The Claimant

was the EIC who was in charge of the spraying operation and who would have released the outside contractor, therefore, it is not reasonable to believe that the Claimant would have driven to Fenton to inspect spraying work and stayed there until the conclusion of his shift. The Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately nine years of service. This was Claimant's second standard violation in an active review period. The discipline was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

AWARD

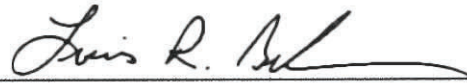
Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 2, 2021