

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 337, (Case No. 337)**

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

VS

BNSF RAILWAY COMPANY

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

. This claim was discussed in conference between the parties.”

- 1. The Carrier violated the Agreement commencing June 3, 2020, when Claimant Arthur V. Balderas (6583231) was assessed a Standard Formal Reprimand with One Year Review for failure to obtain proper authority before leaving his assignment, Friday, March 13, 2020, at approximately 0300 near MP 993.0 on the Bakersfield subdivision.**
- 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 June 3, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0208) (Organization File No. 2419-SL13A1-2010)**

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 night of March 12, 2020, Claimant and C. Kindberg were assigned as Machine Operators on the Mobile Night Surfacing Gang (TXCX1036). Their Foreman was absent, therefore, they were asked to work with Foreman Utu on the Night Rail Change Gang (TRC00122) until the work was completed. At approximately 0300 hours on March 13th, Roadmaster Botelua was notified by Foreman Utu that the two employees had left for the day, explaining that it was Mr. Botelua that allowed them to leave. Botelua told Mr. Utu he had not given them permission to leave and because of that Claimant was directed to attend a formal Investigation on March 26, 2020, which was mutually postponed until May 12, 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 failure to obtain proper authority before leaving your assignment on Friday, March 13, 2020, at approximately 0300 near MP 993.0 on the Bakersfield subdivision.”

On June 3, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Standard Formal Reprimand with a One Year Review Period.

It is the Organization’s position that Carrier did not provide the Claimant with a “fair and impartial” Investigation because the Notice of Investigation did not specify the charges and the Hearing Officer was not impartial. It asks that the claim be sustained without reviewing the merits.

Regarding the merits the Organization argued that Claimant and co-worker Kindberg were asked to work with the Night Rail Change Gang because their Foreman was absent. Both employees worked until their normal shift would have concluded because they were not authorized to work overtime as overtime would have been required to be paid to them if they had worked until completion of the Rail Change Gang’s shift. Claimant and Mr. Kindberg both asserted they were released by Foreman Utu after completing their shift. The Organization also raised the issue that Claimant was treated unfairly because his co-worker Mr. Kindberg who committed the same alleged offense had no charges brought against him. It concluded that the Carrier did not meet its burden of proof and 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 charges specifically explained the violation and the Hearing Officer was not unfair. It asked that the Organization’s procedural arguments be rejected and the claim be addressed on its merits.

Turning to the record the Carrier asserted the Rail Change Gang Claimant was assigned to on March 12, 2020, did not complete its work until 1300 hours on March 13th and Claimant should

have stayed with the Gang until it completed its assignment. It further argued that Claimant misinformed Foreman Utu that Roadmaster Botelua had given him permission to leave after completing eight hours of service. Botelua testified that he did not give Claimant permission to leave before the Rail Gang completed their duties and the Claimant had been counseled in the past that to be able to leave early the Claimant needed to call Roadmaster Botelua to secure permission to leave. The Carrier closed that after proving that Claimant left work without proper authority Claimant was appropriately disciplined. It asked that the discipline not be disturbed and the claim remain denied.

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

Review of the record reveals that on Page 9 of the Transcript, Roadmaster Botelua testified that he talked to the Claimant and Mr. Kindberg and asked them who gave them permission to leave early and they told him that nobody did they just made the decision together to leave early. Foreman Utu offered a written statement that stated in pertinent part:

"...around 3:15 a.m. Mr. Balderas informed me that he will be leaving to go in and do time and I told him it was okay and didn't really need their help with the rail change out and it was okay with me...."

The record was not effectively refuted that when Claimant was temporarily assigned to the Night Rail Change Out Gang Claimant was expected to stay with the Gang until the work was completed. Claimant and his co-worker Kindberg left early which was okay with the Foreman, but was not approved by Roadmaster Botelua. Claimant did not refute that he had been instructed and understood that he needed to secure permission from Mr. Botelua before leaving work early. It is clear that 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 25 years of service with an admirable work record. Examination of that record further shows that Claimant was issued a Coaching and Counseling Letter for similar behavior in the past. However, the Board has been unable to determine why the Claimant and his co-worker were treated differently, therefore, and in conjunction with the Claimant's good work record the Standard Formal Reprimand is removed from the Claimant's Disciplinary Record and the Claimant is issued a Coaching and Counseling Letter.

AWARD

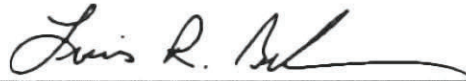
Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.

A handwritten signature in blue ink, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Chairman & Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", is written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in blue ink, reading "Louis R. Below", is written over a horizontal line.

Louis R. Below, Employee Member

Award Date: July 2, 2021