

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 340, (Case No. 340)**

**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:

- 1. The Carrier violated the Agreement commencing March 10, 2020, when Claimant Kevin D. Staggs (1079508) was assessed a Standard 20 Day Record Suspension with a One Year Review Period for failure to report to work at the designated time on January 31, 2020, in violation of MWOR 1.15.**
- 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 March 10, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0099) (Organization File No. 2600-SL13A1-201)**

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 January 31, 2020, Claimant failed to report to work on time while assigned as a Sectionman on Gang ID TRPX0005 near Thayer, MO, and because of that Claimant was directed to attend a formal Investigation on February 13, 2020, which was mutually postponed until February 20, 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 report to work at the designated time on January 31, 2020 in or near Thayer, MO while assigned as a sectionman on gang ID TRPX0005.

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

On March 10, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Standard 20 Day Record Suspension with a One Year Review Period.

The facts of the instant case are nearly identical to Award No. 339 except for a different date. For the sake of brevity, it is noted the same arguments made in the aforementioned Award were made by the parties in the instant case and are made a part of this Award, but will not be reiterated.

This is a companion case to Award Nos. 339, 341, 342 and 343 and is the second of five discipline cases involving the same Claimant. Chronologically this incident was the first dispute to arise.

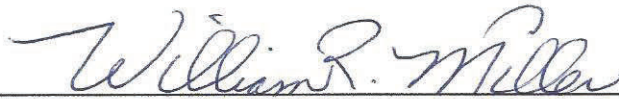
The Board has reviewed the transcript and record of evidence and has determined for the same reasons set forth in Award No. 339 that the Investigation and appeal process met the guidelines of the governing Agreement. The dispute will be resolved on its merits.

Turning to the merits, the Transcript substantiated that Claimant was tardy for his January 31, 2020, 7:30 a.m. assignment and did not show for work until 8:45 a.m. without advising both his Foreman and Roadmaster that he would be late for work. Because Claimant was not in attendance at the Formal Investigation there was no rebuttal offered as to why Claimant was tardy. Substantial evidence was adduced at the Investigation 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 18 years of service with similar offenses on his Disciplinary Record. The evidence shows that on the date in dispute Claimant was forewarned that he needed to make a greater effort to report to work on time and was advised, henceforth, if Claimant intended to mark off or was tardy Claimant needed to advise both his Foreman and Roadmaster. The Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was corrective in nature and was not contrary to the Carrier's Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

AWARD

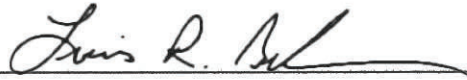
Claim denied.

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