

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 341, (Case No. 341)**

**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 18, 2020, when Claimant Kevin D. Staggs (1079508) was dismissed for sleeping in a Company vehicle while on duty at approximately 1000 hours on February 3, 2020, in violation of MWOR 1.11.**
- 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 18, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.
(Carrier File No. 14-20-0101) (Organization File No. 2600-SL13S1-205)**

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 February 3, 2020, Claimant was working with Rail Production Gang TRPX0005 as a Sectionman in Thayer, MO. At about 1000 hours Claimant was observed sleeping in the Company Van and because of that Claimant was directed to attend a formal Investigation on February 13, 2020, which was mutually postponed 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 sleeping in Company vehicle 25905 during working hours on February 3, 2020 at approximately 1000 hours in or near Thayer, MO while working as a sectionman on gang ID TRPX0005.

This investigation will determine possible violation of MWOR 1.11 Sleeping.”

On March 18, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

The parties’ procedural arguments are exactly the same as set forth in Award Nos. 339 and 340 and are made part of this Award, but for the sake of brevity will not be reiterated.

Turning to the merits, the Organization was unable to offer any reason why the Claimant allegedly fell asleep on February 3, 2020, while on duty because Claimant did not participate in the Hearing. It reasoned that because the Claimant did not attend the Hearing the Carrier had not met its burden of proof and if it had (which it didn’t) the discipline was excessive. It requested the discipline be rescinded and the claim be sustained as presented.

Regarding the facts the Carrier stated Assistant Roadmaster G. Mason was notified by Foreman Ihde that Claimant was observed sleeping in the Company Van. It asserted Mr. Mason drove to the location of the Claimant and discussed the situation with Claimant. According to it Claimant initially stated that was only trying to rest for a moment and unknowingly fell asleep, therefore, it argued Claimant admitted his guilt. The Carrier closed that after proving that Claimant was guilty as charged the Claimant was appropriately disciplined. It asked that the discipline not be disturbed and the claim remain denied.

This is a companion case to Award Nos. 339, 340, 342 and 343 and is the third of five discipline cases involving the same Claimant. Chronologically this incident was the third dispute to arise.

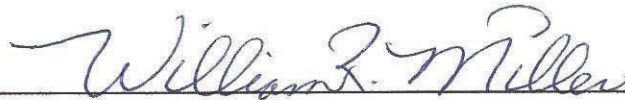
The Board has reviewed the transcript and record of evidence and has determined for the same reasons set forth in Award No. 339 that the Investigation and appeal process met the guidelines of the governing Agreement. The dispute will be resolved on its merits.

Turning to the merits, review of the Transcript shows that Claimant was discovered asleep in a Company Van on February 3, 2020. The un-refuted testimony of Assistant Roadmaster Mason, on Page 9 of the Transcript, substantiated Claimant admitted he fell asleep while he should have been working. The Board notes that this incident was on the same day Claimant was an hour and half late for his assignment (See Award No. 340). 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 multiple offenses on his Disciplinary Record that included Failure to Call and Notify Supervisor of Absence, Failure to Report to Work at Designated Time and Absence Without Authority. Claimant had been repeatedly forewarned that he needed to adhere to all Carrier Rules and Policies to no avail. The Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to the Carrier's Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

AWARD

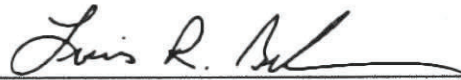
Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 2, 2021