

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 342, (Case No. 342)**

**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 absence without authority when Claimant left the job site after his Foreman to him to stay on February 6, 2020 at approximately 1500 hours 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 18, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0102) (Organization File No. 2600-SL13A1-204)**

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 6, 2020, Claimant may have left the job site without permission and because of that Claimant was directed to attend a formal Investigation on 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 absence without authority when you allegedly left the job site and did not return after your foreman allegedly told you to stay on February 6, 2020 at approximately 1500 hours while working as a sectionman on gang ID TRPX0005.

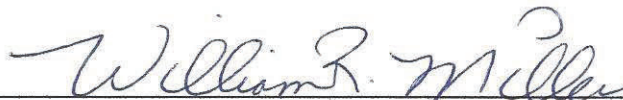
This investigation will determine possible violation of MWOR 1.15 Duty-Reporting or Absence."

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

This is the fourth in a series of five discipline cases and the second of three dismissal cases before the Board involving the same Claimant. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 341 this Board found that Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 341 cannot be overridden and the issue raised in the instant case is now moot, thus, the claim is dismissed. However, we would add that a review of the transcript reveals that Claimant was absent without authority when he left the work site and did not return after his Foreman directed him to stay on February 6th. Carrier's evidence was not refuted and the Carrier met its burden of proof that Claimant was guilty as charged.

AWARD

Claim dismissed.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 2, 2021