

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 363, (Case No. 363)**

**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 November 5, 2020, when Claimant Martin L. Dawson (0283978) was assessed a Standard 20 Day Record Suspension for indifference to duty and failure to report for work at the designated time and place with the necessary equipment to perform assigned job as a Machine Operator, on September 2, 2020.**
- 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 November 5, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-20-0408) (Organization File No. 0493-BN40A1-2031)**

**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.

On September 2, 2020, Claimant did not report at the designated time and workplace site as required and because of that Claimant was directed to attend a formal Investigation on September 15, 2020, which was mutually postponed until October 6, 2020, concerning in pertinent part the following:

**“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with alleged violations that occurred on or about 0345 hours, on September 2, 2020, at or near MP 65.5, on the Lakeside Subdivision, Ritzville, Washington, resulting in a report of your indifference to duty and failure to report for work at the designated time and place with the necessary equipment to perform your assigned job as a Machine Operator, on September 2, 2020. Alleged violations include but are not limited to indifference to duty and failure to report to work, at the designated time and place with the necessary equipment to perform your job duties as a Machine Operator.”**

On November 5, 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 procedural issues and the arguments of the respective parties’ are identical to those raised in Award No. 362 and by their citation they are made a part of the instant Award and for the sake of brevity will not be reiterated.

Turning to the merits, it is the Organization’s position that the Carrier failed to meet its burden of proof. It argued no evidence was presented that Claimant was indifferent to duty. It asserted that on September 2<sup>nd</sup> the Claimant was not allowed to work, thus it was impossible to be indifferent to duty when Claimant was not on duty. It further argued this was a simple case wherein the Claimant overslept which was not surprising that an employee might oversleep on occasion when being required to make a 0345 job briefing. Furthermore, it stated Claimant notified his Superior of his absence in accordance to Carrier Rules. It requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that Claimant was required to report for duty at the designated time and place as required and Claimant failed to do such. It argued the evidence indicates that Claimant’s written statement substantiates that Claimant did not report for work when scheduled and there was no proof offered that Claimant made any attempt to contact his Foreman or Supervisor until almost two hours after he was supposed to be at the job site ready to go to work. It concluded Claimant was indifferent to this duty and discipline was appropriate. It asked that the discipline not be disturbed and the claim remain denied.

This is a companion case to Case Nos. 362 and 364 of this Board. All three cases are discipline cases involving the same Claimant and same time period. Additionally, all of the Investigations were held on the same day and share the same procedural issues.

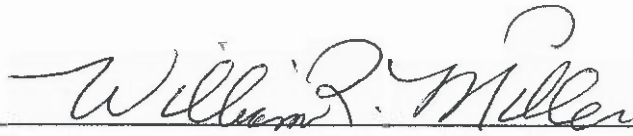
Based upon the same reasoning expressed in Award No. 362 the procedural issues are set aside and the case will be resolved on its merits and by its citation it is made part of this Award.

Review of the record reveals that Claimant did not report for duty at the prescribed time and job site on September 2, 2020. UC01 Foreman, Mr. Andrew Prokop called the supervisor of the gang, Assistant Roadmaster O'Hotske, at around 0300 to report Claimant was not at the hotel that morning. He also explained that a Carrier van assigned to the Group II Machine Operators (Mr. Kevin Durossette and Claimant) was also missing resulting Mr. Durossette using his personal vehicle to get to the job site for the required briefing at 0345 Pacific Time (PT). After the morning job briefing Assistant Roadmaster Hotske attempted to locate the Claimant and the Carrier's missing van. Hotske called Roadmaster Miller to see if Claimant had reported to a Disciplinary Investigation Claimant was summoned to as a witness that day, which Claimant had not. Supervisor Hotske subsequently contacted Claimant at approximately 0600 PT, at which time Claimant said he had overslept and that the van was parked across the street from the hotel. Contrary to the Claimant's written statement the GPS data shows that the van had not been parked across the street from the hotel instead it shows that Claimant departed the hotel the previous evening at 2256 hours arriving at a residential location at 2316 hours, leaving that residence the next morning at 0403, arriving at the hotel at 0423 then traveled to a restaurant (Carl's Jr.) leaving there at 0438 and arriving back at the hotel at 0454. Claimant allegedly called Foreman Prokop (two calls, total duration of five seconds) at 0517. The record is clear that Claimant left the residence he was staying at 0403 which means he was probably awake close the start time of his shift, yet Claimant made no attempt to advise his immediate Supervisor that he overslept for nearly one hour and a half. It is determined that the Carrier met its burden of proof that Claimant showed a lack of concern and indifference to duty and the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately six years of service. The discipline assessed was corrective in nature and in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The discipline was appropriate and will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

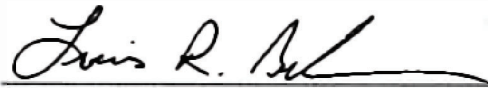
Claim denied.

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

William R. Miller, Chairman & Neutral Member

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

Michelle McBride, Carrier Member

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

Louis R. Below, Employee Member

Award Date: March 25, 2022