

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 372, (Case No. 372)**

**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 4, 2020, when Claimant Brian Edward Lay (0291526) was dismissed for failure to report for at his designated work location and time on October 6, 2020, on the Creek Division in violation of MWOR 1.15 Duty-Reporting or Absence.**
- 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) as well as all health, dental and vision care premiums, deductibles and co-pays that he would have not paid if he had not been disciplined, commencing November 4, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-345) (Organization File No. 2433-SL13A1-2035)**

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 October 6, 2020, was assigned as a Trackman on Rail Production Gang TRPX0005 under the authority of Roadmaster T. Jansani in Weleetka, Oklahoma. Claimant did not attend the morning briefing at 0600 in Weleeka, Oklahoma. At approximately 10:15 hours Supervisor Jansani received a call from Claimant advising him that Claimant had just been

released from jail. Mr. Jansani instructed Claimant to remain off Carrier property. Subsequently, Claimant was directed to attend a formal Investigation on October 15, 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 for duty at your designated location and time on October 6, 2020 on the Creek Subdivision.

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

On November 4, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the Organization’s position Claimant was pulled over by the police while traveling to work and during that police stop a law enforcement officer believed Claimant’s license tag was not in proper order, therefore, the officer detained Claimant while the tags and ownership of the vehicle were checked during which time Claimant dropped his cell phone and it became inoperable. That event coupled with a subsequent flat tire wherein Claimant was not knowledgeable about locking lug nuts contributed to Claimant’s tardiness. Claimant asserted that Claimant notified the Carrier as soon as he could of his situation and why he had not attended the morning briefing. It argued that Claimant’s tardiness was due to no fault of the Claimant and the record shows that Carrier failed to consider the circumstances of Claimant’s tardiness in a fair and equitable manner. It further argued that the discipline assessed was excessive for the Claimant who is a good husband and father and whose family depend on him for their necessities. It requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that Claimant was incarcerated and because of that he failed to appear for work on October 6, 2020. It argued that Claimant admitted on Pages 11 – 12 of the Transcript that he was in jail and was unable to report at the designated time and location, thus it was clear that Claimant was guilty as charged. It then argued that Claimant had committed several violations during an active review period including the instant offense, therefore, the discipline assessed was in accordance with the Carrier’s Discipline Policy. It asked that the discipline not be disturbed and the claim remain denied.

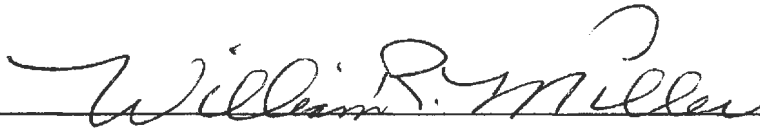
The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of the Agreement.

Review of the record reveals that evidence and testimony presented during the Investigation show that Claimant did not report for duty at the designated time and place Claimant's gang was working on October 6, 2020. The record indicates a Police Officer pulled Claimant over while Claimant was traveling to work and during that stop Claimant's ownership of his vehicle needed to be verified which took some time to substantiate. Claimant was scheduled to be at work by 0600 and did not call his superior until 1015 (over four hours later) to explain his situation. Claimant testified that after being released by the Officer he did not continue to work, but instead drove back to the hotel to use his old telephone to advise his Superior why he was not at work. Claimant testified that because his cell phone was broken when he exited his vehicle after being pulled over by the Police Officer he couldn't call his Supervisor. However, Claimant explained he communicated with his wife using the Policeman's cell phone to straighten out the ownership question of the vehicle (See Page 18 of the Transcript). Surprisingly, Claimant never used that opportunity to ask his wife to call Roadmaster Jansani to explain Claimant's predicament nor did Claimant ask the Police Officer if Claimant could call Jansani directly. The evidence further shows that Claimant did not stop anywhere on his return travel route to the hotel to use a landline to call his Supervisor, but instead waited four plus hours to use his old cell phone. The record is clear the Claimant made no effort to expeditiously advise the Carrier of his situation. 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 six years of service with six disciplinary incidents on his Discipline Record, four of which were for failure to report for duty at a designated work site. Additionally, three of those disciplinary incidents were still under an Active Review Period. The discipline was 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: July 25, 2022