

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 377, (Case No. 377)**

**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 December 17, 2020, when Claimant Quentin Kinney (0218602) was assessed a Standard 10 Day Record Suspension for failure to report for duty at the designated time and place on November 9, 2020, in Truxton, AZ, 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 for a wage loss including overtime (if applicable) commencing December 17, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-21-0057) (Organization File No. 0361-SL13A1-2039)**

**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 November 9, 2020, Claimant did not report for duty as a Truck Driver on Gang TCGX0003, as required, at the designated time and workplace site. On that date CG03 Assistant Roadmaster, Mr. R. Vidaum noticed Claimant was absent at the gang’s 0400 job briefing and asked Foreman Orr if he had heard from Claimant to which he said no. The Assistant Foreman then checked the Lytx Program to view the whereabouts of Claimant’s vehicle #28437 and it

showed the vehicle was still at the hotel and had not moved from the hotel since November 6, 2020. Mr. Vidaum then reached out to Claimant at 0428 via text message to see if the Claimant was okay, but received no response so Vidaum then called Claimant at 0438. At that time, Claimant answered, but the parties couldn't hear each other so Vidaum sent Claimant another text to see if Claimant was alright and Claimant responded at 0446 stating that he would not be at work that day. Based upon that information Claimant was directed to attend a formal Investigation on November 24, 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 the designated time and place on November 9, 2020 in Truxton, AZ while working as a Truck Driver on TCGX0003."**

On December 17, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Standard 10 Day Record Suspension with a One Year Review Period.

It is the Organization's position that the Claimant complied with the Carrier's Absenteeism Notification and Layoff Policy on November 9, 2020. It asserted Claimant notified his Supervisor that Claimant would not be reporting for work as soon as Claimant woke up. It argued Claimant had proper authority from Supervisor/Roadmaster Vidaum and Foreman Orr to be absent account of having overslept (See Transcript Exhibits 5, 15 and 16). It further argued the Pay Code entered into Claimant's payroll was OS (Over Slept) on November 9<sup>th</sup> acknowledges Claimant and his Superiors understood Claimant's reason for not reporting for work. It reasoned that the Carrier did not meet its burden of proof and it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the record shows Claimant failed to report for duty at the designated time and place as required, which Claimant admitted to multiple times during the Investigation. It further asserted this was not the first time Claimant had been disciplined for failure to report for duty at the designated time and place showing Claimant was fully aware of his responsibilities.

The Carrier argued that the Organization incorrectly argued that an employee who eventually contacts a Foreman or a Supervisor as outlined in EI G.4, cannot be found to have violated MWOR 1.15. The Carrier asserted EI G.4 only addresses how an employee notifies the Carrier regarding absences and it does not address that same employee's requirement to comply with MWOR 1.15, which states the employee must "report for duty at the designated time and place with the necessary equipment to perform their duties". It further argued that because

communication eventually took place between the Claimant and his Supervisor after Claimant was supposed to be at the morning briefing does not mean Claimant complied with the aforementioned Rule.

It emphasized that if someone overslept, such as Claimant, there would be no way for them to contact their Supervisor prior to the start of their shift in order to get the absence approved. It explained various absence codes used in its timekeeping system stating that "AA" indicates an approved absence, "AU" indicates an unapproved absence, and "AW" an unapproved absence where the employee failed to contact anyone. It further explained that El G.4 states, whether an authorized or unauthorized absence is approved by the Supervisor is solely up to the Supervisor. In this instance, the correct absence code was "OS", which stands for overslept and since Claimant's absence was not approved it was a violation of El G.4, leading to the inescapable conclusion that Claimant was guilty as charged. 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 Rule 13(a) and Appendix No. 11.

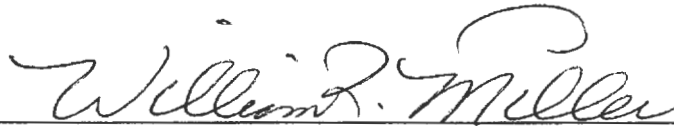
Review of the record reveals that evidence and testimony presented during the Investigation shows that Claimant did not report for duty at the designated time and place Claimant's gang was working on November 9, 2020.

On pages 45 – 46 and 52 – 54 of the Transcript Claimant admitted that Claimant overslept on November 9 and did not have prior approval to be absent or not show up on time at the designated work site. Conversations between the Claimant and his Supervisor after being awoken by the Supervisor on November 9<sup>th</sup> did not negate Claimant's violation of MWOR 1.15. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof and Claimant was guilty as charged.


The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately eight 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**

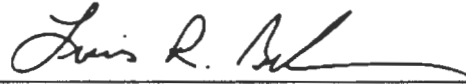
Claim denied.

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: July 25, 2022