

**Case No. 390**  
**Award No. 390**  
**BNSF File No. 14-22-0038**  
**BMWED File No. 2400-SL13A1-2128**

**Public Law Board No. 7048**

**PARTIES**     ) **Brotherhood of Maintenance of Way Employees Division**  
                  ) **ATSFF System Federation**  
**TO**             )  
                  )                     **and**  
**DISPUTE:**    )  
                  )  
                  ) **BNSF Railway Company**

**Members of Board:**

**Jeanne M. Vonhof, Chairman and Neutral Member**  
**Michelle McBride, Carrier Member**  
**Jeffery Fry, Employee Member**

**Statement of Claim**

“We Present the following claim on behalf of Jonny Curley, Emp ID 1159631, Seniority Date 05-24-1997, for the removal of the Claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).”

**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 Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules.

The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

The Claimant (Johnny Curley) was investigated for allegedly failing to comply with instructions when he failed to report for duty on October 30, 2021, after being instructed by his Roadmaster to do so before the end of the shift on the prior day. After an investigation held on January 5, 2022 the Carrier determined that the Claimant violated MWOR 1.13 Reporting and Complying with Instructions. Claimant was issued a Standard Formal Reprimand on January 21, 2022, with a One (1) Year Review Period beginning on that date.

The Claimant's crew was working on the Double A in the Seligman Subdivision in late October 2021. He was scheduled to work a Monday through Friday schedule. Roadmaster Craig Cole presented testimony at the investigation that during a debriefing at the end of an extended shift on Friday, October 29, 2021 he instructed the entire 30-person crew that they were required to work mandatory overtime the following day, a Saturday, because of a derailment in the Needles Subdivision.

Cole said that they had a window of time available all day Saturday to complete their maintenance work, but the same area would likely be closed to them the following Monday and Tuesday, due to derailment-related traffic. He also said that this was the only time he had ordered mandatory overtime that year. Under questioning from the Organization, he acknowledged that there was not an emergency in the area where this crew was working.

The Claimant told Cole that he would not be coming in to work the following day. Three other members of the crew that day stated during the investigation that they overheard the Claimant provide notice to Cole, about 11-12 hours before the shift began, that he would not be coming in to work the following day. Other employees signed a statement saying that they overheard the Claimant provide notice.

Cole acknowledged that the Claimant provided notice that he would not be coming in. Cole stated that the Claimant did not provide a reason at the time why he would not come in to work. The Claimant stated during the investigation that he had an important family meeting on Saturday, October 30 that had been scheduled weeks earlier. He also stated that in his 25 years with the Railroad, he had always provided notice of absences in this way, and had never been counseled that this was improper.

The Organization argues that the Claimant complied with the Engineering Instructions G.4 for reporting an absence to the exempt supervisor. Cole acknowledged at the hearing that he was the Claimant's exempt supervisor at that time. The Instructions do not require the employee to provide a reason for an absence.

The Engineering Instructions clarify that providing notice to the exempt supervisor does not necessarily excuse an absence. Here the Claimant was given instructions to come to work for mandatory overtime. There is nothing in the record that establishes that the Carrier may not require any overtime. The Carrier has presented evidence of the need in this case to order overtime for a single shift, where the Roadmaster rarely mandated overtime; there was a particular need to work around a nearby derailment; and the Claimant did not provide evidence of significant extenuating circumstances for his failure to work as instructed.

Under these circumstances, the Board concludes that the record provides substantial evidence that the Claimant violated MWOR Rule 1.13 Reporting and Complying with Instructions, which states,

“Employees will report to and comply with instructions from supervisors who have the proper jurisdiction.”

Claimant was given instructions to come to work mandatory overtime on October 30, 2021 and failed to do so.

In PLB 5850, Award No. 580, (Bittel) between these same parties, the Board concluded in a similar case that,

“We are not persuaded by the Organization’s argument that this should be treated solely as an attendance case. MWOR is plain and easily understood in its prohibition against ignoring instructions from a supervisor. The Carrier cannot ensure reliable railroad operations unless it can rely on its employees to perform the duties that have been identified by supervision as needed...”

The record is devoid of any indication that the instruction was arbitrary, capricious or discriminatory. Nothing in the parties’ Agreement restricts the Carrier in its managerial right to require overtime. There is no indication that Claimant suffered from any extenuating circumstances...

When employees fail to show for mandatory overtime, the Carrier’s operations are jeopardized due to lack of essential personnel. The Carrier was within its rights to view this offense as warranting imposition of a Standard Formal Reprimand.”

The same rationale applies in this case.

The Organization argues, however, that the penalty assessed, a Standard Formal Reprimand, is excessive, extreme and abusive. The Carrier argues that the penalty is lenient,

because a violation of MWOR Rule 1.13 is a Serious Level S violation, for which the Claimant could have been assessed significantly more serious discipline. The Board concludes that under the circumstances, the penalty of a Formal Reprimand is not excessive or abusive and is appropriate for the violation.

## AWARD

Claim denied.

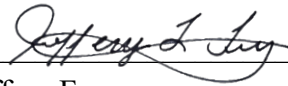
Signature



Jeanne M. Vonhof  
Neutral Member and Chairperson



Michelle McBride  
Carrier Member



Jeffery Fry  
Employee Member

Award Date: August 28, 2024