

Case No. 392
Award No. 392
BNSF File No. 14-22-0074
BMWED File No. 2417-SL13A1-2206

Public Law Board No. 7048

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

Board Members

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 Brian Hayes, Emp ID 0313668, for the removal of the Claimant’s dismissal for Violation of S-28.14 Duty-Reporting or Absence, S-28.13 Reporting and Complying with Instructions, and EI G.4 BNSF Absenteeism Notification and Layoff Policy. We request all record of discipline be removed form the Claimant’s record. The Claimant shall be made whole as a result of the Carrier’s actions.”

Findings:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that the Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance with 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 (Brian Hayes) has worked for the Carrier for about 8 years. An investigation was held on February 18, 2022 for the Claimant’s alleged failure to report at the designated time and place beginning on February 6, 2022 and continuing, while working as a Sectionman on TRPX00018 near Kingman, AZ. The Carrier determined through testimony and exhibits brought

forth during the investigation that Claimant was in violation of ESR 28.13 Reporting and Complying with Instructions, ESR 28.14 Duty-Reporting or Absence and EI G.4 BNSF Absenteeism Notification and Layoff Policy. The Claimant was dismissed via a letter dated March 14, 2022.

The Claimant testified that he was in jail on February 6, 2022, and failed to call in to notify anyone that he would not be at work that day. He testified that when he got out of jail on February 7, he tried to call in but did not have the correct phone number for the Foreman. He said he came to work at his regular time in the morning February 7.


Claimant testified that he had never seen Assistant Roadmaster Robert Tuter before and had never received coaching and counseling regarding his absenteeism. Tuter testified that he had provided coaching and counseling to Claimant on two prior occasions: once when the Claimant came in two hours late to work and was not permitted to work, and once when he signed a receipt for two Notices of Investigation for attendance violations, which Tuter then forwarded in an email to Human Resources. Tuter said that he told the Claimant he must call in to work if he cannot come in and gave the Claimant telephone numbers to call in. He said that he also talked to the Claimant about the EAP program, because he was aware that the Claimant was having personal issues. The Claimant later admitted in testimony that he had been given the telephone numbers to call in.

Under these circumstances the Board concludes that there is substantial evidence that the Claimant violated the rules and policies regarding reporting and complying with instructions and notifying the Carrier of absences. His absence on February 6, 2022 was a “no call/no show,” which is especially serious because the Carrier does not know if the employee has been hurt on the way to work or is just late and still planning to come in to work, and/or whether Management needs to find a replacement for them for that shift. The Claimant violated the Carrier’s attendance rules by failing to appear for work on February 6, 2022 and failing to notify the Carrier that he would not be at work.

The Organization argues that under the Carrier’s own policy the Claimant is to receive coaching and counseling. The Carrier argues that the Claimant’s record shows that this was his fifth attendance infraction within a month, and he had accepted a Formal Reprimand for a January 23 absence just a few days earlier. On this record there is substantial evidence that the Claimant was aware of his precarious position with regard to his attendance standing and had not been denied coaching and counseling. His attendance record was deteriorating, but he did not seek assistance from the Union, Management or the EAP for any personal issues that may have been affecting his attendance. The Board cannot conclude that under these circumstances, the penalty of dismissal is excessive or arbitrary.

AWARD

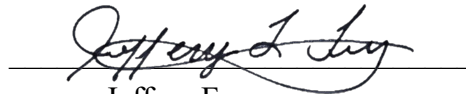
The claim is denied.

Signature 

Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle D. McBride
Carrier Member



Jeffery Fry
Employee Member

Date of Award August 28, 2024