

Case No. 401
Award No. 401
BNSF FILE No.14-22-0129
BMWED FILE No. 2415-SL13A1-2215

Public Law Board No. 7048

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

Members of the Board:

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

Statement of Claim:

This letter is our appeal to you concerning the Dismissal issued to Ronnie Moorhead (1653344) May 25th, 2022, by Josh LeMar, BNSF Signal Supervisor. The company states that Mr. Moorhead was in violation of MWOR 1.15 Duty-Reporting or Absence and MWOR 1.6 Conduct as sited (sic) in Carrier File Number SWE·MOW-2022·00129.

Findings of the Board:

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, Ronnie Moorhead, was scheduled for an investigation for the purpose of ascertaining the facts and determining his responsibility in connection with his alleged absence without proper authority when he allegedly failed to report at the designated time and place on March 24 and 25, 2022 while working as a Trackman on TSEC1710 on the Clovis Subdivision. As a result of this investigation, the Carrier determined that Claimant had violated MWOR 1.15 Duty-Reporting or Absence and MWOR 1.6 Conduct. He was dismissed via letter dated May 25, 2022.

Roadmaster Jadrien Brittenum testified that he believed that the Claimant was a “no call/no show” for March 24-25. Brittenum said that he sent a text to the Claimant on the evening of March 22 telling him that his “no/call no/shows” for March 21 and 22 were not acceptable. He said that he did not hear again from the Claimant until March 28. Brittenum was on vacation that week and Roadmaster Jerry Gonzalas was acting as Claimant’s supervisor.

The Claimant testified at the investigation that he had talked to Roadmaster Gonzalas on Wednesday March 23 or Thursday March 24, 2022. The Organization presented a call log which it said was from the Claimant’s cellphone showing a call to a “Jerry Gonzalas” at 0516 on March 24. Claimant said that he spoke to Gonzalas on that date and told him that he was not getting better, and that he would be out the rest of the week. He said that Gonzalas told him that he would need a doctor’s note. The Claimant testified that he was not able to get in to see the doctor until Friday, March 25. He said that he texted the doctor’s note to Gonzalas and was never told that it was not received. Claimant also testified that he also saw the doctor on March 22, but had no note from that date because he thought he would be better and would be returning to work.

Gonzalas testified that he did remember talking to the Claimant the week of the March 21, and the Claimant telling him that he was ill and was going to the doctor. Gonzalas said that he told the Claimant to be sure to bring him a doctor’s note. Gonzalas said that he was not sure of the date, but if they had a telephone call log saying the Claimant called him at 0516 on March 24, that was probably the date. He said that he never received a doctor’s note and that he never contacted the

Claimant to ask him about it. Gonzalas said that because the Claimant sounded sick and he was going to the doctor, he figured he would be out sick for the remainder of the week when he spoke to him.

During the investigation the parties called the medical clinic the Claimant said he went to that week in order to obtain a copy of the doctor's note. The clinic said that the Claimant was required to sign a release form, and that the clinic had sent it to the Claimant's email. The Claimant said he could not locate the email but had asked the clinic to send another one. A doctor's note was not presented in the investigation.

The Organization argues that the Claimant, after talking to Gonzalas, reasonably believed that he could remain off from work as long as a doctor's note would be provided at a later and undetermined date. The Organization argues that the acting Roadmaster had an understanding that the Claimant would be off for the remainder of the week. The Organization argues that there was no reason for the Claimant to continue to contact the supervisor after their conversation.

There is substantial evidence for the Carrier's conclusion that the Claimant failed to report to a supervisor that he was going to be off for the rest of the week before the shift began on Thursday, March 24. Although there is a call to Gonzalas on Claimant's cellphone log at 0516 that morning, and Gonzalas acknowledged he probably talked to the Claimant that day, it is not clear from Gonzalas' testimony that the Claimant reached him at that time. Gonzalas testified that he thought he spoke to the Claimant in the afternoon after he visited the jobsite and asked whether the other employees had seen the Claimant. After that conversation, the Claimant reasonably believed that he need not report off separately for Friday, March 25 because Gonzalas expected him to be off for the remainder of the week.

The Board concludes that there is substantial evidence to support the violations charged. If the Claimant believed that he needed to be absent from work on Thursday, March 24 and 25, he had an obligation to notify his supervisor ahead of time. There is not persuasive evidence on this record that the Claimant notified his supervisor – or anyone -- before the shift began that he was not coming into work that day. Therefore, he was reasonably considered a “no show/no call” under the Company's attendance standards. When an employee does not show up for work and does not call before the shift to notify his supervisor that he will not be coming into work, the supervisor must make other arrangements to accomplish the work which was assigned to the employee for that day, once it has been determined that the assigned employee is not coming into work that day.

The Carrier argues that the Claimant violated not only MWOR 1.15 regarding reporting for duty, but also MWOR 1.6 Conduct because his conduct towards these absences indicates an extreme indifference to duty. Claimant assured Roadmaster Gonzalas that he would provide a doctor's note to explain his absences from multiple days of scheduled work during this period. Gonzalas told him to be sure to do so. However, there is no evidence in the record to establish that Claimant ever provided a doctor's note.

The Organization argues, however, that this absence should have been combined with other absences that week into a single investigation, rather than splitting up the absences among four different investigations resulting in four disciplinary actions. The Organization cites Third Division Award No. 41871 and others for the view that the Carrier may not pile on discipline, because it deprives the employee of an opportunity to learn from their mistakes and to improve any misconduct through progressive discipline. The Organization argues that none of these violations, standing alone, would warrant treatment as a serious offense and it is only when the Carrier piles on the violations that it is able to argue in favor of a cumulatively serious violation.

The Carrier argues that each of the four investigations here involved violations which occurred under different factual circumstances, and potentially involve violations of different rules. Some of the violations were more serious than others. In the case at issue here, for example, the Claimant was charged with committing a violation of both MWOR 1.15 and MWOR 1.6 because he could not establish that he had notified anyone of his absence before the beginning of the shift on March 24. The Carrier argues that because this was a "no call/no show," this constitutes a more serious offense, justifying Dismissal, after the Level S 30-Day Suspension he had already been assessed. In addition, the Claimant failed to show that he ever provided a doctor's note to explain his absences for multiple days that week, as he had promised, and which Roadmaster Gonzalas had told him to be sure to provide.

Although the incidents in question in the claims at issue here occurred close to each other in time, the Board concludes that there were different facts involving each attendance incident. Several involve a failure to call in to a supervisor to report Claimant's intention not to come to work before the beginning of the shift. Others involve the Claimant's failure to provide a note from a doctor for multiple days of absence, after assuring supervisors that he would provide such a note.

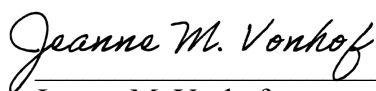
The Carrier has charged the Claimant with violations of different rules based upon the facts involved in each situation.

In contrast, Third Division Award No. 41871 involved a situation where a claimant was subject to four separate investigations involving nearly identical factual circumstances and the same rule violations. That case involved four minor attendance violations that would be handled progressively under PEPA. The Board concluded that the events should have been treated as a pattern of the same behavior repeated over and over again, close to each other in time.

The Board concludes that the incidents in issue here are not so similar that the Carrier may not treat them as different violations. The Carrier has presented substantial evidence that the Claimant was a “no call/no show” for the dates of March 24 and 25. In addition, he failed to provide a doctor’s note to explain multiple days of absence, after he said he would do so and Roadmaster Gonzalas told him to be sure to submit it. This is a serious attendance violation and the discipline imposed, of a Dismissal, is not excessive or arbitrary, especially considering that the Claimant was at a Level S 30 Day Suspension.

AWARD

Claim denied.



Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle McBride
Carrier Member



Jeffery Fry
Employee Member

Award Date: **January 8, 2025**