

**Case No. 402**  
**Award No. 402**  
**BNSF File No. 14-22-0128**  
**BMWED File No. 2415-SL13A1-2214**

**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:**

This letter is our appeal to you concerning the Level S 30 Day Record Suspension issued to Ronnie Moorhead (1653344) on May 25th, 2022, by Josh LeMar, BNSF Signal Supervisor. The company states that Mr. Moorhead was in Violation of MWOR 1.15Duty Reporting or Absence and MWOR 1.6Conduct as sited in Carrier File Number SWE-MOW-2022-00128.

**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, Mr. Ronnie Moorhead, was notified of an investigation to determine his responsibility for his alleged absence without proper authority on March 22, 2022 while working as a Trackman on TSEC1710 on the Clovis Subdivision. The investigation was held on April 26, 2022 and as a result of that investigation the Claimant was assessed a Level S 30 Day Record Suspension on May 25, 2022 for his absence without proper authority for failing to report for work at the designated time and place on March 22, 2022. He was found in violation of MWOR 1.15 Duty-Reporting or Absence and MWOR 1.6 Conduct and was assessed the Level S 30 Day Suspension with a Three (3) Year Review Period beginning on May 23, 2022.

Mr. Jadrien Brittenum, Clovis Roadmaster, testified that the Claimant was working in a backhoe relief operator position that day, assigned to installing switch point panels at Montrose. Brittenum was on vacation that week and said that his information was that the Claimant had not called in before his shift to report to his supervisor that he would not be working that day, and so he was a “no call/no show.” According to Brittenum, other employees had to be pulled off their assignments to complete the Claimant’s assignment on March 22, 2022.

The Organization presented a call log to show that Claimant called Track Supervisor Dallas Fleming that morning at 0503 before his shift began. Brittenum confirmed that the phone number in the call log was Dallas Fleming’s number. Claimant testified that he went to the doctor on that day but did not get a doctor’s note.

The Claimant said that during the week in question, he was very sick with pneumonia. He said that he believed he was fulfilling his work obligations by not coming to work, so that he did not infect his co-workers. He also said that they had recently had a Track Supervisor die from COVID, so he thought that it was important to stay away from work.

The Carrier argues that the only evidence of the Claimant calling in to report off before his shift on March 22 is a telephone number identified as the Track Supervisor’s number on his cellphone’s outgoing call log at 0503, and a return call from that number at 0634, more than an hour after the shift began. According to the Carrier, this is not sufficient evidence to conclude that Claimant actually reached anyone on the day in question before his shift began. In addition,

according to the Carrier, he is required to report an absence to an exempt supervisor, not a Track Supervisor.

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 Tuesday, March 22, 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 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 failed to notify a Roadmaster of his absence on March 22, 2022 in advance of his shift, and because he could not establish that he had notified anyone of his absence before the beginning of the shift. The Carrier argues that because this was a “no call/no show,” this constitutes a more serious offense, justifying a Level S 30 Day Record Suspension, with a Three (2) Year Review Period.

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.

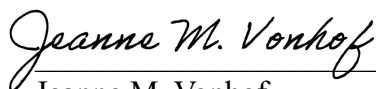
Several involve a failure to call in to a supervisor to report Claimant's intention not to come to work before the beginning of the shift. Others involve the Claimant's failure to provide a note from a doctor for multiple days of absence, after assuring supervisors that he would provide such a note. 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 date of March 22, 2022. This is a serious attendance violation and the discipline imposed, of a Level S Thirty (30) Day Record Suspension is not excessive or arbitrary.

#### **AWARD**

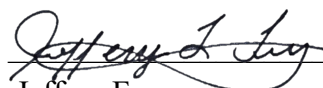
Claim denied.



Jeanne M. Vonhof  
Neutral Member and Chairperson



Michelle McBride  
Carrier Member



Jeffery Fry  
Employee Member

Award Date: **January 8, 2025**