

**PUBLIC LAW BOARD NO. 7564**

Case No. 67/Award No. 67  
Carrier File No. 11-16-0050/51/52  
Organization File No. T-D-4792-M  
Claimant: Joshua A. Jordan

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BNSF RAILWAY COMPANY )  
 )  
-and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
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**Statement of Claim:**

Sectionman Joshua A. Jordan was dismissed via three letters, all dated September 21, 2015. Each letter cited a violation of MWOR 1.15 Duty Reporting or Absence. The three incidents that resulted in the alleged violations occurred while Mr. Jordan was assigned to Gang TSEC1443. The alleged violations of MWOR 1.15 occurred because on July 28, 2015 Mr. Jordan did not report at 0500 hours, on July 31, 2015 he did not report at 0700 hours and on August 18, 2015 he did not report at 0700 hours. Allegedly these absences occurred without authorization. Each dismissal was appealed by the Organization, with the claims filed by John A. Mozinski, Jr., Vice Chairman Secretary/Treasurer on November 16, 2015. The claims state: “. . . due to this excessive and prejudged discipline, Mr. Jordan must be immediately paid for his lost time on the day to attend investigation, including any and all overtime paid to the position he was assigned to work, any expenses lost, difference in pay, and we also request that Mr. Jordan be made whole for any and all benefits, his record cleared of any reference to any of the discipline set forth in the letter received by the Organization on September 23, 2015 letter from Shannon Sturmer.”

**Facts:**

By letters dated July 30, August 3 and August 21, 2015 the Claimant was notified of three investigations “for the purpose of ascertaining the facts and determining your responsibility, if any” for unauthorized absences respectively on July 28, July 31 and August 18, 2015. Ultimately, there was an agreement to hold the three investigations on August 27, 2015 at the BNSF 2<sup>nd</sup> Floor Conference Room, 801 Main Avenue, Fargo, ND, 58103.

**Carrier Position:**

With respect to all three incidents, the Carrier avers that the Claimant acknowledged that he was late without authorization on all three days and that the admission constitutes substantial evidence. The dismissals were in accordance with the Policy for Employee Performance

Accountability (PEPA) Appendix B. The Organization now asks for leniency, which is not the Board's prerogative, nor should the Board substitute its judgment for that of the Carrier. If the claims are sustained, the Board should offset damages with outside earnings. Health insurance premiums and other damages not provided for in the current agreement should not be included in any remedy ordered by the Board.

**Organization Position:**

The Organization asserts that the dismissals were excessive because the Carrier did not consider mitigating circumstances. The Claimant is a veteran with medical issues and family relationship issues and he let his personal life affect his work life. He failed to renew his FMLA authorization. The Claimant needs rehabilitation rather than punishment. The Claimant should be reinstated and made whole for lost wages, including lost overtime. There should be no offset for earnings unrelated to his dismissal.

**Findings:**

With regard to July 28, 2015, Roadmaster Randash testified that the Claimant was contacted prior to the end of his shift the day before and told to report at 0500 hours the following morning, but that he did not appear until 0700 so that the tardiness was unauthorized. The Claimant stated that he woke that morning thinking he was to report at 0700 hours and did not learn of the earlier reporting time until 0655 when he called in. Foreman Mattila said that he told the gang, all together in the boom truck, of the 0500 reporting time. Truck Driver Knutson stated that the Foreman had said in the Claimant's presence that the Gang was to report at 0500. The Board must conclude that the Claimant had been told of the 0500 hours reporting time and was two hours late without authorization.

The Claimant had been told to report to Casselton at 0700 hours but did not call and did not show until almost 1000 hours. The Claimant indicated that he had taken medication for a flare-up of gout in his right foot and consequently slept through his alarm. He contacted Mattila at about 0915 and came to work.

On August 18, 2015, according to Roadmaster Randash, the Claimant was not at the Section House at 0700 and arrived at 0737, having sent an earlier text message that he had overslept. The Claimant essentially confirmed the Roadmaster's account. The Claimant was sent home on all three days.

The Board accepts the Claimant's statement that he is an eighteen (18) year military veteran and that he has family issues. However, the Board is faced with an employee who was hired only two years earlier. In the record is a September 5, 2014 letter from Roadmaster Randash to the Claimant memorializing a discussion they had after the Claimant was absent on August 28, late on

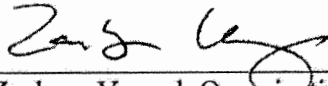
August 29 and late on September 5, 2014. The letter served as a written warning. The Claimant's Employee Transcript shows September 25 and October 24 Formal Reprimands for failure to report and May 12 and June 16 Record Suspensions for the same violations. If leniency is to be granted, in accordance with many awards in this industry, doing so is the Carrier's prerogative, not the Board's. This Board is faced with a short-term employee with total of ten (10) unauthorized absences or tardies, those mentioned in the written warning included, in a one (1) year period. The Carrier must have employees who can be counted on to meet their schedules. The Claimant's record leaves the Board no choice but to deny these claims.


**Award:**

Claims denied.

**Order:**

This Board after consideration of the disputes identified above, hereby orders that no Award favorable to the Claimant be entered.

  
Zachary Voegel, Organization Member

  
John Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas  
January 31, 2018