

PUBLIC LAW BOARD NO. 7564

Case No. 68/Award No. 68
Carrier File No. 10-16-0058
Organization File No. C-16-D040-3
Claimant: Trenton J. Cline

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim:

By letter dated October 27, 2015 Section Foreman Trenton J. Cline was given a Standard 20-Day Record Suspension and a One (1) Year Review Period for an alleged violation of MWOR 1.15 Duty Reporting or Absence. The December 7, 2015 claim from the Organization, James Varner, Vice General Chairman, appealed what was said to be excessive discipline and asked that the discipline "be removed from his [Claimant's] records in accordance with Rule 40 of the current agreement."

Facts:

By letter dated September 30, 2015 the Claimant was informed that "An investigation has been scheduled for 0900 hours, Monday, October 12, 2015, at the Roadmaster's Office, 2315 East Richards Street, Douglas, WY, 82633, for the purpose of ascertaining the facts and determining your responsibility, if any, in conjunction with your alleged failure to report for duty and (sic) the designated time and place on September 29, 2015, at/or near MP 91.1 on the Orin Subdivision, while assigned as an Assistant Foreman on Regional System Gang TUCX0001."

Carrier Position:

The Carrier insists that the Claimant violated MWOR 1.15 when he failed to report at his designated time of 0700 hours, reporting instead at 0845 hours, when he was sent home and paid for three (3) hours. The Claimant's admission provides the required substantial evidence. The discipline imposed was in accordance with the Policy for Employee Performance Accountability (PEPA). The Organization asks for leniency, which is the Carrier's prerogative, not the Board's, which should not substitute its judgment for that of the Carrier. A verbal warning was not required because the Claimant was not a first-time offender. He received a fair and impartial investigation and there was no showing that alleged procedural errors prejudiced the Claimant. Should the claim be sustained, the Claimant is due only the removal of the discipline from his records.

Organization Position:

The Claimant did not receive a fair and impartial investigation as due process was lacking and the discipline was excessive, arbitrary and capricious. The Claimant was sent home and docked five (5) hours of pay, then additionally punished with the suspension and review period. He had not received a prior verbal warning. Roadmaster Willmon's testimony was untruthful and self-serving. The Conducting Officer, not Roadmaster Willmon read MOWR 1.15 into the record but the MWOR was not entered as an exhibit.

Findings:

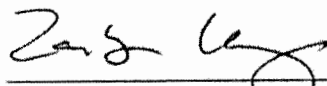
Relatively little needs to be written in the way of explanation and analysis. During the investigation the Claimant admitted that he had overslept and was late and thus he provided substantial evidence of the MWOR 1.15 violation. While the better practice would have been to enter the Rule as an exhibit, the Rule was read into the transcript of the investigation so that the Claimant knew precisely the Rule he was accused of violating and the Board had the appropriate standard against which to judge the Claimant's behavior. The Claimant was not due a verbal warning rather than a suspension because in November 2012 he had received a Formal Reprimand for failure to report on time and in May 2015 he had received a record suspension for the same infraction. Roadmaster Willmon testified to the Carrier policy of sending somebody home right away when they are late. Because the Roadmaster did not initially see the Claimant after he reported late, the Claimant actually received more pay for the day than he might have.


Award:

Claim denied.

Order:

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


Zachary Voegel, Organization Member


Zahn Reuther, Carrier Member

A handwritten signature in cursive script, appearing to read "I. B. Helburn", followed by a long horizontal line extending to the right.

I. B. Helburn Neutral Referee

Austin, Texas
January 31, 2018