

P.L.B. No. 7585
Case No. 24
Award No. 24

PUBLIC LAW BOARD NO. 7585

CARRIER FILE NO. 10-13-0208

ORGANIZATION FILE NO. C-13-D040-11

CLAIMANT: Micah Grote

Parties To Dispute:

Brotherhood of Maintenance of Way Employees Division – IBT
& BNSF Railway Company

Statement of Claim: *The Carrier violated the Agreement on December 21, 2012 when it assessed Claimant, Micah Grote (0063362) a Standard Formal Reprimand, with a 1-year review period, for alleged violation of MOWOR 1.13-Reporting and Complying with Instructions, for alleged failure to report for duty at the designated time and place repeatedly, most notably on November 21, 2012.*

Background Facts:

Many of the facts of this case are not contested. Claimant Grote worked as a Machine Operator for RP04 at the time of the events here concerned. On November 21, 2012, he heading to work for a 6:30 briefing and had a flat tire. The vehicle he was driving had recently had another flat, and the spare “donut” was already in use.

Claimant called his supervisor, Marissa Proctor, at 05:15. According to Proctor, he said "Marissa, you're not going to believe what happened again." She testified that Claimant would not have been able to perform the duties of his job without attending the 6:30 safety briefing. She said she asked whether he could make the briefing and he responded he could not. She stated she then told him that if he could not make it to work by 6:30, there was no need for him to come in.

Claimant testified to a more vague memory of the conversation with Proctor. He recalled her saying that since he was having the trouble, he should not to even both to come in. [TR 28] According to Claimant, "All I remember is being told not to show up for work." [TR 29] This was the day before Thanksgiving so Claimant lost three days pay.

Opinion of the Board:

The Standard Formal Reprimand issued to Claimant for this incident stated as follows in pertinent part:

As a result of investigation held on Friday, November 30, 2-12 at 1300 hours ... you are hereby assessed a Standard Formal Reprimand for your failure to report for duty at the designated time and place repeatedly, most notably on November 21, 2012 while assigned to RP04. * * *

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MOWOR 1.13 Reporting and Complying with Instructions.

Evidence regarding prior instances of failure to report was excluded on objection, hence the "repeatedly" aspect of the alleged violation was never established during the investigation. Though the Reprimand says it was "for" multiple failures to report for duty, the only rule cited as having been violated was MOWOR 1.13; the Reprimand made no mention whatsoever of MOWOR 1.15 which addresses reporting for duty.

In the opinion of this Board, the purpose of a Reprimand is to put the employee on notice of what rule he or she has been found to have violated. In this way, the Reprimand

gives the employee an opportunity to learn from his or her mistake(s) and to benefit from a progressive disciplinary system. When the Reprimand fails to specify which rules are considered to have been violated, the employee is not given adequate notice of the particular performance that must be improved.

The Reprimand here concerned speaks to multiple failures to report for duty when there was only evidence of one. Clearly, the record of investigation does not support the articulated finding. The only rule specifically and clearly cited in the Reprimand is MOWOR 1.13 - Reporting and Complying with Instructions. MOWOR 1.13 states: "Employees will report to and comply with instructions from supervisors who have the proper jurisdiction."

The Organization insists there is no way to find Claimant in violation of this rule since his supervisor told him not to come in under the circumstances, and he followed her instructions. This argument is persuasive. Claimant was told not to come in if he could not be there by 06:30. He did not think he could get there by 06:30, so he did not come in. There was no failure to follow a supervisory instruction here.

AWARD:

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

Order:

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

Patricia T Bittel

Patricia Thomas Bittel
Chair and Neutral Member

Donald J. Merrell
May 22, 2014

Donald Merrell,
For the Carrier

Gary J. Hart

Gary Hart,
For the Organization

Dated: April 10, 2014