

**PUBLIC LAW BOARD NO. 7585**

**Case No. 33/Award No. 33  
Carrier File No.: 10-13-0428  
Organization File No.: C-13-D040-25  
Claimant: B. K. Dillon**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
-and- )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYES DIVISION - IBT** )  
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**FACTS:**

On April 23, 2013, the Carrier assessed Claimant a Standard Formal Reprimand, alleging that on March 4, 2013, Claimant failed to notify his supervisor and failed to report for duty.

**CARRIER POSITION:**

K. Pendergraft consulted his notes and stated that on March 4, 2013 Claimant missed his morning briefing so he called, but received no answer. On March 5, he spoke with him, pointing out he had no prior knowledge of Claimant's March 4 absence. Claimant missed the morning briefing that day as well.

Claimant responded that he had a doctor's appointment and thought he had told Pendergraft. She recalled his admission that it was his fault and would not happen again. Pendergraft explained that Claimant is a Group 2 Machine Operator, and when he does not show, another Operator has to be found on short notice. Work projects have to be either canceled or modified. He stated it is not possible that Claimant told him about the appointment and he forgot, because he makes a note of it whenever an employee advises him of an absence.

**ORGANIZATION POSITION:**

The Organization objected to the testimony of Roadmaster K. Pendergraft on the grounds that it asked for a witness list and was not provided any. It notes that Rule 40 requires that the Notice has to specify the charges for which the investigation is being held. The Notice included the wording of the rule, but not the number of the rule. In the Organization's view, this does not meet the requisites of Rule 40.

The Organization points out that Claimant was not compensated for his time at the investigatory hearing, and views this as a breach of the Rule 40 obligation to provide a fair and impartial investigation.

Claimant admitted he did not report for duty on March 4. He described a prior incident when he was out because his wife was having surgery and Pendergraft was notified but forgot. Claimant definitively states he advised Pendergraft of his March 4 absence more than two weeks out. He said he was fully aware of his obligation to notify and had not had any problem with Pendergraft before this.

**DECISION:**

It was not a violation of Rule 40 for the Carrier to either deny Claimant compensation for his time spent in investigation or to deny the Organization a witness list. The Organization argues the Carrier violated its Rule 40 obligation to provide a fair and impartial hearing in that it failed to compensate the Claimant for his time spent in the investigation. The Board is not so persuaded; the terms of Rule 40 do not express a joint intent for such compensation. The Board's ruling in this respect is limited to an interpretation of Rule 40 and expresses no opinion about whether such an obligation exists under a separate provision of this Agreement or any other agreements. Moreover, in clearly describing the offense with which Claimant was being charged, the Notice met the requirements of Rule 40.

In the view of the Board, the scales were tipped by Pendergraft's notes regarding his interview with Claimant on March 5. Pendergraft had no reason to fabricate statements and falsely attribute them to Claimant. Pendergraft's notes were detailed and contemporaneous. They evidenced that Claimant was not surprised that Pendergraft was asserting a lack of notification. Though Claimant said he thought he had notified Pendergraft, he acknowledged the lapse was his fault and he would not do it again. This cannot be harmonized with Claimant's assertion at hearing that he definitively notified Pendergraft at least two weeks before the absence.

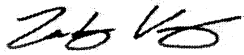
**AWARD:**

The claim is denied.

September 2, 2015

A handwritten signature in cursive script, reading "Patricia T. Bittel".

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to read 'Zach Voegel'.

Zachary Voegel, Labor Member

A handwritten signature in black ink, appearing to read 'Donald J. Merrell'.

D. J. Merrell, Carrier Member