

PUBLIC LAW BOARD NO. 7585

**Case No. 45/Award No. 45
Carrier File No.: 10-14-0216
Organization File No.: C-14-D070-6
Claimant: Matthew D. Ivie**

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

On Sunday, April 20, 2014, Claimant Matthew D. Ivie allegedly failed to report for duty; he had no prior authorization for an approved absence. This was deemed to be a violation of MOWOR 1.15, a serious offense. At the time Claimant was under a Level S 30-day Record suspension. As a result, he was dismissed.

CARRIER POSITION:

Ravenna Sub Roadmaster George Biro explained that on Monday, April 21, he was reviewing the work done by Track Inspectors when he noticed no inspections had been performed the previous day, which was Easter Sunday. Since Sunday was a scheduled work day for Claimant Ivie, Biro called Claimant who told him no track and time was available so he took his truck to the Lincoln Yard Facility, cleaned it up then had lunch with his family. According to Biro, Claimant stated there was no track and time due to a broken rail with 16 trains backed up. Claimant sent an email to Biro identifying the broken rail as "on single track between McDonald and grand Island," and saying he "had a nice lunch and afternoon with the family."

According to Biro, Claimant's truck was equipped with a GPS which records the truck's position every time the key is in the ignition. Records showed no key in Claimant's ignition for Sunday, April 20. Instead, ignition was recorded on April 19 and again on April 21, both at Claimant's residential address.

Biro acknowledged a conversation with Claimant prior to the weekend about Claimant's schedule on April 20. According to Biro, he authorized an early start so Claimant could complete his eight-hour day early. There was no discussion about a partial day, he said. Biro asserted he did not approve any absence or reduction of the April 20 eight-hour workday. According to Biro, there are a number of other duties Claimant could have performed.

In the Carrier's view, the unavailability of time and track in no way constituted approval for an absence. Claimant was responsible for contacting supervision if he wanted the day off.

ORGANIZATION POSITION:

The Organization asserts a fatal procedural flaw in that the discipline was issued by Director of Administration, Nebraska, Darren R. Compton even though he was not the investigating officer and was not in a position to make the critical credibility determinations involved in the case.

The record shows Claimant told Biro he was having family into town, and discussed with him the possibility of coming in early so that he could complete his day and have time with his family. Claimant did not recall Biro saying he had to work a full eight hours. Rather, Biro said he would "work with him" so that he could leave early and spend time with his family. According to Claimant, "he gave me permission to leave early." "[H]e said that I would be able to leave early on Sunday, after I did some work, and to me, that's having proper authority to leave early."

When Claimant contacted the Dispatcher, he learned there was no track and time available due to a broken rail and trains were lined up; he would be waiting around for hours if he got on at all. Claimant admitted he did not call Biro after speaking with the Dispatcher. He said he took scrap from his truck, loaded it into his personal vehicle and transported it to Lincoln Yard. In Claimant's view, he did work in accordance with his agreement with Biro, and therefore had permission to leave early. The Organization argues Claimant reasonably understood that he was getting off early to be with his family and the case amounts to nothing more than a miscommunication.

DECISION:

The credibility determinations made by the Carrier are adequately supported by the undisputed record. As a result, there is no prejudicial error in this case by virtue of the fact that Compton was not the Investigating Officer.

Claimant's testimony matches Biro's in many important aspects. Both agree they discussed the fact that Claimant had family visiting on Easter Sunday. Both agree Claimant wanted to end his day early so he could spend time with his family. Both agree that Claimant would be allowed to start his day early in order to accommodate this desire. Claimant does not deny telling Biro he took "his truck" to Lincoln Yard. He does not deny that he never called Biro after talking to the Dispatcher. Claimant only told Biro that he took his personal vehicle (and not the Company truck) to Lincoln Yard after Biro advised that he knew the Carrier's truck had not been moved.

The undisputed critical fact in this case is that Claimant did not call his supervisor to apprise him of changed circumstances. Instead, he made a unilateral determination as

to what and how much work might be done and when his supposedly early starting day was complete. The agreement for an early start by no means afforded Claimant the freedom to fabricate a work day of his own choosing and the Board is not persuaded that the early start both Biro and Claimant described is synonymous with a work day consisting of "some" work, to be determined solely by the employee.

Under MOWOR 1.15, employees must report for duty at the designated time and place, with the necessary equipment to perform their duties. There is no objective evidence that Claimant "reported" anywhere. The only evidence of "reporting for duty" is Claimant's misleading assertion that he took "his truck" to Lincoln and cleaned it out. Scrap was already loaded into the Carrier's truck; one would reasonably expect Claimant to simply get into the truck with the scrap and drive it to Lincoln.

But the Carrier truck did not move. Claimant's belated assertion is that he transferred the scrap into his personal vehicle, drove his personal vehicle instead of the Carrier's truck to Lincoln, and then cleaned out scrap for a second time. No reason was given or can be imagined for going to the extra trouble of moving scrap into his personal vehicle. There is no conceivable rationale for choosing to dirty his own car then put excess miles on it. Not a single reason was offered for the irrational decision to unnecessarily move scrap twice when it was loaded into the Carrier truck and ready to go. Transfer was, however, the only possible explanation for not moving the Carrier truck on a day when Claimant claimed to have gone to Lincoln. The Board finds Claimant's testimony is unpersuasive as a matter of record.

The work Claimant planned to do was unavailable. His supervisor was not advised of the need to reassign him, and was not afforded an opportunity to either give an assignment or to give him permission to take the day off. Claimant admitted that on non-holidays, he would call in after learning track and time was not available to find out what other work he could do. "I would find something to occupy my time." Given the draw of being with his family, Claimant took matters into his own hands, avoided the possibility of being given an eight-hour assignment and took an unauthorized absence. This was a direct violation of MOWOR 1.15, a serious offense.

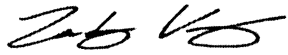
AWARD:

The claim is denied.

July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member