

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 72
Carrier File No.: 10-17-0299
Organization File No.: C-17-D070-12
Claimant: D.C. Garner

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

STATEMENT OF CLAIM:

The Organization alleges BNSF violated the Agreement when Claimant was dismissed as a result of a formal investigation held on June 2, 2017, for Claimant's violation of Maintenance of Way Operating Rules 1.15 "Duty - Reporting or Absence" and 1.6 "Conduct" for his absence without authority beginning on May 4, 2017 while assigned as a Truck Driver on gang TSEC0366.

CARRIER POSITION:

The Carrier points out that during the investigation, Claimant Garner admitted that he did not have authorization to be absent on May 4, 2017. In its view, this admission is sufficient basis for finding the alleged violation. It notes this was Claimant's second serious violation, meaning dismissal was the appropriate disciplinary measure. It contends leniency is the purview of the Carrier, and no reason for leniency exists in this case.

ORGANIZATION POSITION:

The Organization argues that the hearing was unfair in several respects. It claims Roadmaster Brysn Mulhern testified about a rule prohibiting indifference to duty which was not at issue in the case. It notes the Conducting Officer in essence was putting exhibits into evidence without discussion in a blatant display of prejudice and bias.

It further contends that Claimant did initiate contact with Mulhern prior to his absence through his brother-in-law. Mulhern admitted that he knew about the absence due to a call from the Claimant's relative and never said he took exception to the absence; he merely testified that he had not spoken to the Claimant personally. In the Organization's perception, Mulhern never testified that Claimant lacked proper authority to be absent. The Organization concludes the termination cannot stand in such a context.

DECISION:

The rules clearly list unauthorized absence as a serious violation. They also make it clear that a second serious violation within a review period may result in dismissal. There is no contest regarding the initial serious violation Claimant received in 2016.

The Organization makes a point that Mulhern was confused about the applicable rules and the Hearing Officer's handling of the admission of evidence was less than adroit. However, these events during the investigation were not prejudicial to the case. The relevant facts were presented, and were not hidden or distorted.

The question to be answered is whether the Carrier has substantial evidence that Claimant was absent from work without authorization. The Carrier has provided evidence that Claimant was indeed absent from work on May 4 and 5. His only contact with supervision was through his brother-in-law.

There certainly can be circumstances where an employee is unable to call or contact supervision. In those instances, use of an intermediary to contact supervision regarding an absence might be seen in a different light. However, in this case, there was no contention that Claimant was unable to contact his supervisor; his brother in law conveyed Claimant's desire to use vacation time; no sickness or injury was in evidence. There is no evidence that the request was granted.

It was Claimant's responsibility to obtain authorization for his absence. No reason was presented as to why he might have been prevented from doing this. Mulhern testified unequivocally that he had no contact with Claimant prior to the absence. The evidence shows that Mulhern did not give Claimant authorization for his absence, either directly or by way of the brother-in-law. It follows that the Carrier has met its burden of proof.

AWARD:

The claim is denied.

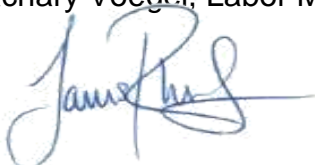
May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member