

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 10

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES DIVISION

v.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-12-0163
Organization File No. 240-13A1-127

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on April 27, 2012 when it dismissed Claimant, Alonzo Bert, for being absent without proper authority for more than 5 consecutive workdays.
2. As a consequence of the violation referred to in part (1), 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 account of this incident.

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

The Organization claims that there is no substantial evidence in the record because the Carrier did not provide adequate documentation that Claimant had been given notice. Further, a continuance should have been granted at the hearing so that Claimant could attend the investigation hearing.

The Carrier responds that the evidence established that Claimant did not report to work for five or more consecutive workdays. Claimant did not call to mark off and was given appropriate notice of the investigation.

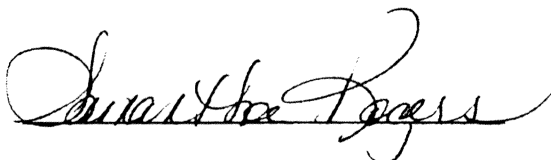
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there is substantial evidence that Claimant did not report to work. He was given appropriate notice of the charges and the investigation. Claim denied.

Claim denied.

Brian Clauss

Brian Clauss, Chairman



Samantha Rogers, Carrier Member



David D. Tanner, Organization Member

Signed on December 23, 2013