

BEFORE PUBLIC LAW BOARD NO. 7590

CASE NO. 55

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V

BNSF RAILWAY

(Former ATSF Railway)

BNSF FILE NO. 14-16-0256

BMWED FILE NO. 1251-SL13A1-166

Claimant: J. Farris

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Southeast Division 900 Jessy Farris (0239848) Seniority Date October 14, 2013 for reinstatement with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The claimant shall be made whole for all financial losses as a result of the violation, including compensation for: 1.) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service); 2.) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service; 3.) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service; 4.) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing April 5, 2016, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

Findings:

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. Parties to said dispute were given due notice of hearing thereon.

Claimant did not report for duty on April 4 and 5, 2016. Claimant received a letter dated April 5, 2016, that provided:

An investigation has been scheduled at 1000 hours, Wednesday, April 13, 2016, at the BNSF Conference Room at Crest Tower, 1631 West 33rd Place, Tulsa, OK, 74107, for the purpose of ascertaining the facts and determining your responsibility if any, in connection with your alleged failure to report for duty as Assistant Foreman of TSEC0120 and alleged failure to comply with instructions to obtain authorization for absence from Roadmaster Aaron Erwine on April 4, 2016 and April 5, 2016.

This investigation will determine possible violation of MWOR 1.13 Reporting and Comply with Instructions, MWOR 1.15 Duty Reporting or Absence, EI 22.6 Absence From Duty Procedures.

Following an investigation, Claimant was notified in a letter dated May 10, 2016:

As a result of investigation held on Wednesday, April 13, 2016 at 1000 hours at BNSF Conference Room at Crest Tower, 1631 West 33rd Place, Tulsa, OK, 74107 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to report for duty as Assistant Foreman of TSEC0120 and failure to comply with instructions to obtain authorization for absence from Roadmaster Aaron Erwine on April 4, 2016 and April 5, 2016. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.13 Reporting and Complying with Instructions, MWOR 1.15 Duty Reporting or Absence and EI 22.6 Absence from Duty Procedures.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

This letter will be placed in your personnel record.

The Carrier argues that Claimant did not show up for work. Although he stated that there were life events, that does not excuse him from notifying his supervisor. Claimant has a history of not appearing and the Carrier has given him every opportunity to correct.

The Organization counters that Claimant was contacted by his Foreman and told not to come into work. Claimant stated that he had been up with an ill grandparent and Claimant thought he was excused. Further, Claimant produced a document from Army Medical Command that detailed medical restrictions affecting his military duties. He did not know that such medical restriction should be reported to the Carrier.

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.

MOWOR Rule 1.13 and 1.15 provide:

1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

1.14 Employee Jurisdiction

Employees are under the jurisdiction of the supervisors of the railroad they are operating on.

When operating on another railroad, unless otherwise instructed, employees will be governed by:

- Safety rules and hazardous materials instructions of the railroad they are employed by.
- The operating rules, timetable and special instructions of the railroad they are operating on.

1.15 Duty—Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

The Board has reviewed the evidence. There are no procedural violations which void the discipline. On the merits we find that there is substantial evidence in the record to support the discipline. The evidence shows that Claimant did not report for duty on two consecutive dates. He was contacted by his Foreman and told to stay home because he was already over an hour late. This was Claimant's fifth similar issue in less than a year. He was aware of the procedure for contacting his Foreman if an absence was necessary. Further, his possible medical restrictions were not reported to the Carrier. Claimant was aware that he had to report any restriction to Army Reserve Command. He was also aware that any restrictions should be reported to the Carrier if they impacted his job performance or he required an accommodation.

Employees have a duty to report to work. Claimant did not report to work on two consecutive dates and did not contact his Foreman. There is substantial evidence to support the finding of Rules infraction.

A review of Claimant's disciplinary history indicates that the instant matter was Claimant's fifth similar incident violation in less than a year. The Carrier's decision to dismiss Claimant was not an abuse of Carrier discretion.

Award:

Claim denied

A handwritten signature in blue ink, appearing to be "R. M.", written over a horizontal line.

Organization Member

A handwritten signature in black ink, appearing to be "Brian Clauss", written over a horizontal line.

Brian Clauss
Neutral Member

A handwritten signature in black ink, appearing to be "Sandra H. Rogers", written over a horizontal line.

Carrier Member