

BEFORE PUBLIC LAW BOARD NO. 7590

CASE NO. 58

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. 14-16-0329

BMWED FILE NO. 493-SL13A1-1610

Claimant: B. Bange

STATEMENT OF CLAIM

We present the following claim on behalf of Southeast District 900 Brandon Bange (0134353) Seniority Date August 6, 2012 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 May 2, 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.

In the instant matter, Claimant received a letter advising him to appear at an investigation on May 10, 2016, that provided:

An investigation has been scheduled at 0900 hours, Tuesday, May 17, 2016, at the BNSF Division Office, 801 Main Avenue, Fargo, ND, 58103, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged absence without leave beginning on May 2, 2016, and continuing, while assigned as a machine operator on RP09 TRPX0009. Contact Josh Fluck at 763-782-3404 or Joshua.Fluck@bnsf.com with any questions regarding this investigation, postponement or waiver. Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the labor agreement. Please acknowledge receipt by affixing your signature in the space provided below.

Following postponement, a hearing was held. Claimant did not appear for the hearing. Claimant was notified of his dismissal from service:

As a result of investigation held on Thursday, May 19, 2016 at 0900 hours at BNSF Division Office, 801 Main Avenue, Fargo, ND, 58103 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for absence without leave beginning on May 2, 2016, and continuing, while assigned as a machine operator on RP09 TRPX0009. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.15 Duty Reporting or Absence. 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).

The Carrier argues that Rule 1.15 is clear. Claimant was a no call no show. In essence, he abandoned his job. It was not an abuse of discretion to terminate his employment.

The Organization raises a procedural objection that it was error to proceed with an absent Claimant. On the merits, the Organization contends that there was insufficient proof of attempts to contact Claimant and also that the discipline was excessive.

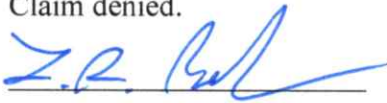
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is 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.

This Board finds that there are no procedural violations which void the discipline. Claimant was given notice of the hearing and the postponement. He did not attend or notify the Carrier of the reasons for his absence. Further, there was substantial evidence introduced at the hearing to show that Claimant did not report for work for a number of consecutive days and continued not to report or contact the Carrier. As of the date of the hearing, the Carrier had not heard from Claimant for weeks. The evidence shows that Claimant abandoned his employment. It was not an abuse of discretion to terminate his employment.

Award:

Claim denied.

A blue ink signature, appearing to read "Z.R. Bell", written over a horizontal line.

Carrier Member

A blue ink signature, appearing to read "Dana L. Rogers", written over a horizontal line.

Organization Member

A blue ink signature, appearing to read "B. Chen", written over a horizontal line.

Neutral Member