

BEFORE PUBLIC LAW BOARD NO. 7602

AWARD NO. 58

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

AND

BNSF RAILWAY

BNSF FILE NO. 11-15-0499

BMWED FILE NO. T-D-4747-M

Claimant: R. Schenk

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

Claim was filed September 10, 2015 on behalf R. F. Schenk when the Company assessed discipline of a Level S, 32 day actual suspension, with a one (1) year probationary period. The Carrier assessed the discipline on Claimant when the Claimant left his machine to get a part for his machine. Claim was denied by General Manager Thomas C. Albanese with letter dated October 23, 2015, received October 26, 2015. We cannot accept the decision of Mr. Albanese and are, therefore, appealing this claim to you for your review and consideration. This letter serves as an effective appeal under the applicable provisions of the current Agreement. A copy of this letter is being furnished to Mr. Albanese to inform him that his decision is unacceptable.

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 7602 has jurisdiction over the parties and the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

Claimant was notified in a letter dated June 8, 2015:

An investigation has been scheduled at 1300 hours, Monday, June 15th, 2015, at the BNSF Depot, 1801 Highway 75 N., Sioux City, Iowa 51105, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with the alleged unapproved absence on Friday, June 5th, 2015, and falsification of time. The date BNSF received first knowledge of this alleged violation is June 8th, 2015.

This is to advise Rocky A. Miller is being withheld from service pending results of investigation.

This is to advise Ross F. Schenk is being withheld from service pending results of investigation.

This is to advise Michael L. Metzinger is being withheld from service.

An investigation was held and Claimant was notified in a letter dated July 10, 2015:

As a result of investigation held on Monday, June 15, 2015 at 1300 hours at BNSF Depot, 1801 Highway 75 N, Sioux City, IA, 51105 you are hereby assessed a Level S Actual Suspension for your unapproved absence on Friday, June 5, 2015 and falsification of time.

This actual suspension will be served as 32 days Actual Suspension as follows: June 9, 2015 through July 10, 2015.

In addition, you are being assessed a One (1) Year Review Period that commences on July 10, 2015. Any rules violation during this review period could result in further disciplinary action.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct.

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 there are no procedural defects in the instant matter. The evidence shows that Claimant and his coworkers left work early yet recorded a full day of work. Their truck was observed at the hotel for the entire afternoon when they should have been at their assigned duties.

The Organization summarized their position in a letter dated December 16, 2015:

Mr. Schenk was working by himself with the section. His machine broke down and the mechanic, Mr. Kapaun, came up to help him repair it. In exhibit 15 you will see where Mr. Kapaun left about 1:00 - 1:30 and Mr. Schenk was still working at his machine. Mr. Schenk admits to leaving after Mr. Kapaun left; he estimated it to be around 2:00. He had to put the tools away, lock the machine, clean himself up, and change clothes. After getting in his car he went to the gas station off the Alexandria exit to finish washing up then drove back to Mitchell to grab his jacket, which he had forgotten in the truck the day before. Mr. Schenk should have charged overtime and mileage after leaving Mitchell around 3:00p.m., but instead now is brought up on charges for theft essentially when he was actually under-paid by Mr. Miller and donated his time and mileage.

The Organization also reminds that Claimant has over three decades of service to the Carrier without discipline. At thirty-four years of service, he was the junior employee on the gang.

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.

The Board has reviewed the evidence. There are no procedural violations which void the discipline. On the merits we find that there is no substantial evidence in the record to support the discipline.

Award:

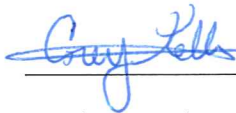
Claim sustained.

Order:

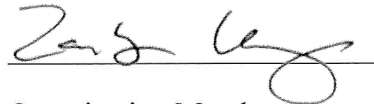
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Neutral Member



Carrier Member



Organization Member

June 14, 2018