

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 72

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. 10-18-0045

BMWE FILE NO. C-18-Do70-1

Claimant: C. Mazanec

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STATEMENT OF CLAIM

Consider this an appeal in accordance with Rule 42, on behalf of employee, Chad C. Mazanec, Employee Number 1726710 for reinstatement to service with seniority unimpaired and for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier's arbitrary, capricious, and excessive discipline in dismissing claimant from service. In other words, this appeal seeks to make claimant whole and expunge his record the same as if he was never affected by this discipline. A simple joint inspection of Carrier's records can determine the extent of loss.

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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.

In the instant matter, Claimant received a letter advising him to attend a formal Investigation:

An investigation has been scheduled at 1300 hours, Tuesday, October 3, 2017, at the Third Floor Main Conference Room, 201 N. 7<sup>th</sup> Street, Lincoln Depot, Lincoln, NE, 68508, for the purpose of ascertaining the facts and determining your

responsibility, if any, in connection with your alleged failure to protect your assignment, leaving without proper authority, on September 2<sup>nd</sup>, 9<sup>th</sup>, and 23<sup>rd</sup>, 2017, and alleged falsification of time worked that you reported to EAM on September 2<sup>nd</sup>, 9<sup>th</sup>, and 23<sup>rd</sup>, 2017, while assigned as a Track Inspector on gang TINS2239. The date BNSF received first knowledge of this alleged violation is September 25, 2017.

A hearing was held and Claimant was notified of the results of the investigation in a letter that stated:

As a result of investigation held on Tuesday, October 3, 2017, at the Third Floor Main Conference Room, 201 N. 7<sup>th</sup> Street, Lincoln Depot, Lincoln, NE, 68508 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to protect your assignment, leaving without proper authority, on September 2<sup>nd</sup>, 9<sup>th</sup>, and 23<sup>rd</sup>, 2017, and falsification of time worked that you reported to EAM on September 2<sup>nd</sup>, 9<sup>th</sup>, and 23<sup>rd</sup>, 2017, while assigned as a Track Inspector on gang TINS2239.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct and MWOR 1.15 Duty Reporting [SIC] 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).

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

The Carrier maintains that the discipline was appropriate to the misconduct in the instant matter. The GPS in Claimant's vehicle indicated that he worked less than five hours on September 2, 2017, less than three hours on September 9, 2017, and less than three hours on September 23, 2017. Claimant was charged with GCOR 1.6 for claiming time not worked and GCOR 1.15 for working less than eight hours yet claiming eight hours.

The Organization maintains that there is no evidence of a violation. Claimant is a track inspector and his show up location is his home. Simply leaving his home late and returning early is not dispositive. Contrary to what the Carrier argues, Claimant had work duties that could be done from home such as planning repairs. His task of assigning work was an extra task given by the Roadmaster. Claimant should not be disciplined for doing

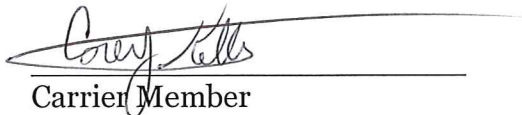
his work at his show up site and not sitting in his vehicle with the engine running. Claimant reported for work and did his job. The Claim should be granted.

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.

Here, there is substantial evidence in the record that Claimant worked less than eight hours on the three days. The evidence shows that, although Claimant's show up location may have been his home, he did not leave home until after his start time and returned early. Contrary to the Organization's argument, the evidence shows that Claimant was at home for large portions of the workday and the Carrier has proven that Claimant was not doing track inspector-related work during those times.

Award:

Claim denied.

  
Carrier Member

  
Organization Member

*Brian Clauss*

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Neutral Member

Dated: July 18, 2019