

PUBLIC LAW BOARD NO. 5939

Case No. 46
Award No. 46

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS & TRAINMEN

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer Brain H. Fransen for removal of discipline (formal reprimand) from his personal record and that he be made whole for all lost time.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The Claimant hired out as a Brakeman on April 15, 1993. In 1995, he was promoted to a Locomotive Engineer. In 2003, the Claimant was on the Engineers' extra board at Gillette, Wyoming.

Train and engine service employees on the Powder River Division are not allowed to layoff on call. They are not subject to call if they are on approved personal leave.

The Claimant had personal leave approved for August 18, 19 and 20, 2003. When the Claimant's travel plans changed, he called the chief crew caller and requested to have his personal leave changed to August 21, 22 and 23, 2003. The chief crew caller advised him that she would assist him in getting his layoff changed. However, his personal leave was never changed from August 18, 19 and 20 to August 21, 22 and 23, 2003.

On August 22, 2003, the Claimant was called off the extra board for an Engineer's vacancy on the Logan Helper, Train K-NAMNAM2-22. The Claimant was in Phoenix, Arizona on August 22, 2003, and therefore was unable to accept the call. He was carried as laying off on call.

The Claimant was notified to attend an investigation to ascertain the facts and determine his responsibility, if any, for his alleged failure to protect his assignment by laying off on call on August 22, 2003. The investigation was held on August 30, 2003. On September 26, 2003, the Claimant was given a formal reprimand of his reputed violation of Rules 1.3.3, 1.13 and 1.15 of the Carrier's General Code of Operating Rules.

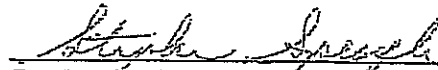
Based on the August 16, 2003, conversation between the Claimant and the Carrier's chief crew caller, there was a legitimate misunderstanding over the Claimant's request to have his personal leave changed. The crew caller advised the Claimant that she would try to assist him in getting his layoff changed. He left Gillette, Wyoming under the impression that his personal leave for August 21, 22 and 23, 2003, had been approved. Unfortunately, it had not been approved.

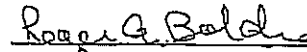
Based on these circumstances, the Claimant's layoff on call on August 22, 2003, was excusable, in this Board's opinion. He was in Phoenix, Arizona at the time of the call and simply could not work the assignment for which he was called. Accordingly, this Board finds that the formal reprimand given the Claimant for laying off on call was unjustified and must be removed from his persona record. In view of this finding, it is unnecessary to address the procedural issues raised by the Organization.

AWARD: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Stephen D. Speagle, Employee Member


Roger A. Boldra, Carrier Member

Dated: Oct 3, 2006