

PUBLIC LAW BOARD NO 7026

AWARD NO. 05
CASE NO. 05

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)
VS.

BNSF RAILWAY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of California Division Yardman L. F. Jennings for the removal of a Ten-Day Record Suspension from his personal record and pay for any time lost while attending the investigation.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Yardman L. F. Jennings hereinafter referred to as the Claimant received notice dated January 9, 2006 to attend a formal investigation as follows in pertinent part:

“You are hereby notified to attend formal investigation in the Superintendent’s Conference Room, at 1501 F Street, Bakersfield, California, at 1700 hours on 01/25/06 for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to perform service as a full-time employee in accordance with the BNSF Attendance Guidelines during the three-month period of Oct-Nov-Dec, 2005, in possible violation of Rules 1.6 (Negligent), 1.3.3, and 1.13 of the General Code of Operating Rules in effect April 3, 2005; and Notice No. 122 of the 2005 California Division General Notices.”

General Notice issued August 17, 2005, requires that train, yard and engine service employees be available for service on a full time basis. The Notice also states that employees should have reasonable opportunities to be off from work and establish’s guide lines to accommodate these goals.

The primary requirement is for employees to be available for service a minimum of seventy five per cent of the time which is averaged over a "rolling" three month period. (Any three contiguous months.) There is a provision that the guide lines must yield to any conflicting labor agreement.

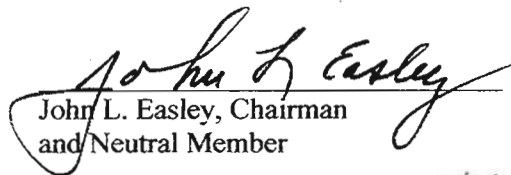
The Carrier provided the Claimants attendance record for the months involved showing that he marked off one day in October, four days in November and seven days in December. The Claimant was for the most part assigned to a five day a week yard assignment with two assigned days off per week. This type of assignment allows an employee to mark off for three days during any three month "rolling" period. Therefore in the view of the Carrier the Claimant had exceeded his threshold three days and was in violation of the Attendance Policy.

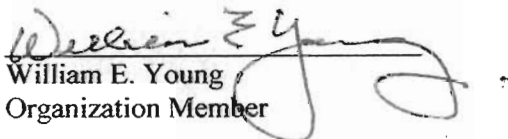
The Organization raise procedural question concerning timeliness of the hearing. The hearing was held within the thirty days. The Carrier had knowledge of a possible infraction when the attendance records for December were available on January 8th and the hearing was scheduled within thirty days of that date. The Organization also questioned the propriety of using the months of October and November because the Claimant had been previously charged with attendance violation for the months of September, October and November thus creating a situation where a single violation would be counted more than once. The Carrier in property handling agreed to not count the lay offs in October and November, however the seven day lay off in December was sufficient to exceed the three day threshold of the Attendance Policy.

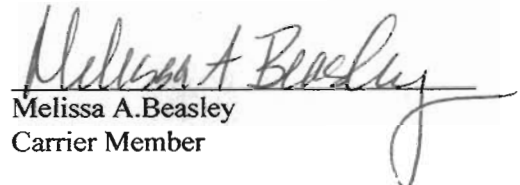
OPINION OF THE BOARD:

The Claimant was cognizant of the Policy and procedures contained therein, he had been previously censured for violation of the policy for the months of April, May and June of the same year. The Collective Bargaining Agreement provides that a Yardman may lay off when ill or injured without documentation from a physician within a specific time frame. The Attendance Policy does not interfere with the Agreement, it stipulates minimum standards for minimum attendance. The Employee may apply for a formal leave of absence or consideration under the Family Medical Leave Act. The discipline assessed will not be modified.

AWARD: Claim Denied


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member