

PUBLIC LAW BOARD NO 7026

AWARD NO. 06
CASE NO. 06

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of California Division Conductor A. D. Esparza for removal of a Twenty-Day Record Suspension from his personal record and pay for time lost while attending 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.

The Claimant was advised to attend a formal investigation by letter dated March 17, 2004 which reads in pertinent part:

“You are hereby notified to attend formal investigation in the BNSF Bldg. Conference Room, at 4006 E. Vine Street, Fresno, California, at 1300 hours on Tuesday, March 23, 2004, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with report alleging your failure to perform service as a full-time employee in accordance with the BNSF Attendance Guidelines during the three-month period of December 2003, January and February 2004; in possible violation of Rules 1.6, 1.3.3, and 1.13 of the General Code of Operations Rules in effect April 2, 2000; and Northern California Division General Notice No.30, in effect October 16, 2003.”

The hearing was properly postponed and was convened on April 20, 2004. The Carriers General Notice 30 dated October 30, 2003, requires that train, yard and engine service

employees be full time and stipulates the criteria to maintain full time employment. The basic tenant is that employees must be available for service a minimum of seventy-five per cent of the time.

The Claimants lay off record for the involved months was made available for review and indicated being off on 16 week days and 20 weekend days. The permissible threshold for days off under General Notice 30 is 15.50 week days and 6 weekend days.

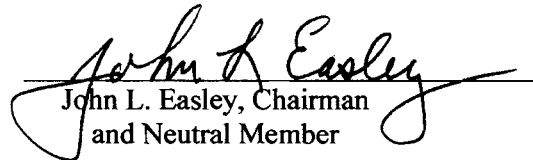
The Claimant argued that the lay-offs were caused by difficulties at home, his wife was in the early stages of pregnancy, experiencing nausea and the Claimant was needed to care for their young children. There is a record of the Claimant discussing his problem with management in December at which time he was given information on the Family Medical Leave Act.

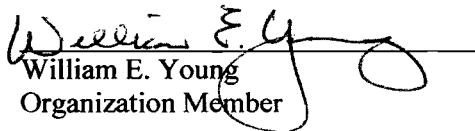
OPINION OF THE BOARD:

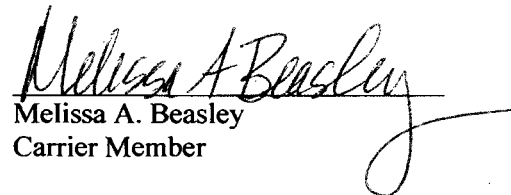
The FMLA had not been submitted by the end of the three month period let alone approved. When we view the Claimants personal record involving the Attendance Policy and find that he had been disciplined five times prior to the present case it is hard to understand how he could run afoul of it a sixth time, but he did. The Board will not modify the discipline assessed by the Carrier.

AWARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member