

PUBLIC LAW BOARD NO 7026

AWARD NO. 12
CASE NO. 12

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 Southwest Division Conductor W. C. Mike for removal of Level-S thirty day record suspension from his personal record and pay for any 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.

Conductor W. C. Mike hereinafter referred to as the Claimant was advised to attend a formal investigation by letter dated August 29, 2005, as follows in pertinent part:

“Attend formal investigation at the BNSF Conference Room, 1535 North Park Drive, Winslow, Arizona, on Wednesday, September 7, 2005, at 11:00 a.m., M.D.S.T., with your representative and witness(es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.4, 1.6, 1.13 and 1.15 of the General Code of Operating Rules, Fifth Edition, effective April 3, 2005, as supplemented or amended; BNSF Southwest Division General Notice No. 9, dated October 25, 2004, as supplemented or amended; and Paragraph B(9) entitled “Lay Off On Call” of BNSF Southwest Division General Notice No. 58, dated October 25, 2004, as supplemented or amended; concerning your allegedly laying off on call when called for service as conductor for Train L-SWE0051-22A, called on duty at 7:00 p.m., August 22, 2005, at Winslow Arizona; and

your alleged dishonesty with Superintendent Kreger concerning same.”

The investigation was held as scheduled without the benefit of testimony of the Claimant nor argument of a Organizational representative. The Carrier produced a recording of the Claimant laying off on call because he was at a doctors office. He later advised superintendent of Operations L. P. Kreger that he laid off because he had a relative in the hospital that was not doing well.

During property handling the Organization argued that the Claimant did not receive his notice of investigation until the day after the hearing was held thus creating a procedural defect on the part of the Carrier. General Manager G. A. White addressed that concern in his letter to Local Chairman T. Thomas wherein he states that:

“I have interview^d Field Support Specialist Sharon Bryant and she personally mailed Mr. Mike the certified mail on August 29, 2005 to his address of record, as required by his Collective Bargaining Agreement. You were also provided a courtesy copy of the notice of investigation.”

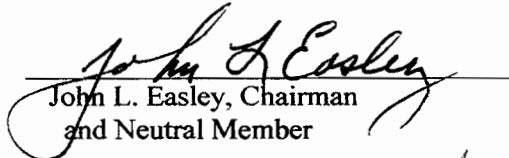
Local Chairman Thomas does not tell us when he received his copy of the notice so we must assume it was timely and that he was aware of the investigation date, time and location.

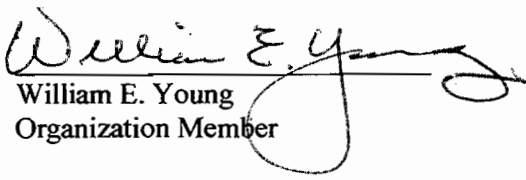
OPINION OF THE BOARD:

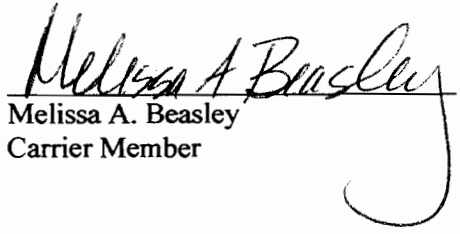
The Board holds that the notice of investigation was mailed timely, that it appears the Local Chairman was aware of the date and time of the hearing and would have been in contact with the Claimant. This creates a somewhat of a conundrum, the agreement calls for a written notice which was done and it was mailed timely but for some unknown reason not delivered timely. The discipline assessed will not be modified, however because of the unique circumstance involved this award will be restricted to this case only and not used as a precedent in the future.

AWARD:

Claim Denied on the basis of the above opinion.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member