

**PUBLIC LAW BOARD NO 7026**

AWARD NO. 21  
CASE NO. 21

PARTIES TO  
THE DISPUTE

UNITED TRANSPORTATION UNION  
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: July 7, 2008

STATEMENT OF CLAIM:

Claim of California Division Engineer B. J. Daniels for reinstatement to service, pay for time lost (without deduction of outside earnings) seniority and all other rights unimpaired.

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.

Under date of October 18, 2005, Locomotive Engineer B. J. Daniels hereinafter referred to as the Claimant was instructed to attend a formal investigation as follows in pertinent part:

"You are hereby notified to attend formal investigation in the General Conference Room, at 4006 East Vine Street, Fresno, California at 0830 hours, on October 26, 2005, 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 July, August, September 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 Notices No. 8 and 122 of the 2005 California Division General Notices."

The Carrier mailed the notice of investigation on October 18, 2005, to the last address provided by the Claimant. The postal employee attempted to deliver the notice on October 20<sup>th</sup>, leaving a Post Office Form indicating that the Claimant could pick it up at the Post Office or that it could be redelivered. Regardless, the Claimant did not attend the hearing, stating later that he had not received it.

The facts adduced at the hearing were that the Claimant had laid off eight weekend days during the 90 days period whereas the carrier policy allows six weekend days without censure.

On April 18, 2005 the Carrier issued General Notice No. 8, which is a revision of the Policy for Employee Performance and Accountability in effect July 1, 2000. Appendix D of the Notice reads:

**“Handling Attendance Violations (per TY&E Attendance Guidelines)**

BNSF established Attendance Guidelines in March 2000 that describe certain minimum attendance standards for train, yard and engine employees in full-time service. These Attendance Guidelines refer to a discipline sequence that will remain intact and will supersede the revised PEPA for handling attendance violations. If the employee’s only violations are attendance violations as defined by the Attendance Guidelines, the following matrix applies:

<u>Current Record</u>	<u>Result</u>
First attendance violation*	Formal Reprimand
Second attendance violation	10 day record suspension
Third attendance violation	20 day record suspension
Fourth attendance violation	Employee may be dismissed

\* Assumes employee has not been disciplined for attendance in the last 12 months. (Note that the review period established for attendance violations in the Attendance Guidelines requires that an employee work 12 months without an attendance discipline incident before an attendance violation is considered inactive.)

If an employee’s violations are a combination of PEPA rule violations and attendance violations, the following points apply, as established in the Attendance Guidelines:

- The first attendance violation is NOT subject to alternative handling. It must be handled with a formal reprimand. Subsequent attendance violations are handled at the level reflecting the total number of active attendance violations.
- The pattern of behavior is considered dismissible if the employee has a total of four active attendance violations or three active attendance violations and a serious rule violation within the past 36 months (or the past 12 months, if the employee’s record review period was reduced to recognize five years of injury-and discipline-free service).
- The pattern of behavior is also considered dismissible if the employee has a total of five rule violations of any kind in a 12-month period (which may include a combination of non-serious, serious and attendance violations).

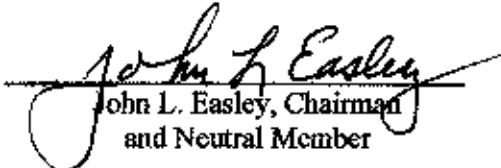
Note that the review period established for attendance violations in the TY&E Attendance Guidelines requires that an employee work 12 months without an attendance discipline incident before an attendance violation is considered inactive.”

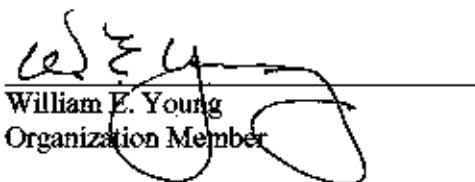
OPINION OF THE BOARD:

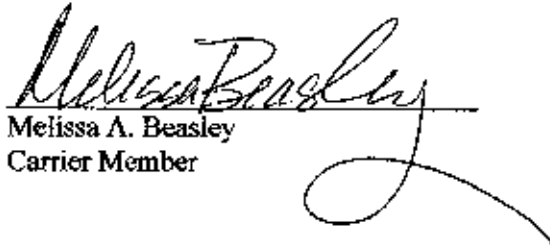
The procedural issue of improper notice of the hearing, is not valid as the Carrier followed the requirements of the rule albeit narrowly, they were in compliance. The facts that were presented at the hearing would not have been different had the claimant been in attendance, and the Board believes any excuses offered would have fallen on deaf ears.

Inasmuch as this was the Claimants fourth violation of the Attendance guide Lines, and his fifth discipline assessment within the preceding twelve months the Board will not alter the discipline assessed.

AWARD: Claim Denied.

  
John L. Easley, Chairman  
and Neutral Member

  
William E. Young  
Organization Member

  
Melissa A. Beasley  
Carrier Member