

PUBLIC LAW BOARD NO 7026

AWARD NO. 03
CASE NO. 03

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION

VS.

BNSF RAILWAY
(COAST LINES)

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of California Division Yardman W. Selles for removal of Letter of Reprimand 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.

On August 24, 2005, the Carrier wrote to Yardman Selles, hereinafter referred to as the Claimant to attend a formal investigation as follows in pertinent part:

“You are hereby notified to attend formal investigation in the Terminal Manager’s Conference Room, at 720 South B Street, Stockton, California at 0900 hours on Tuesday, September 6, 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 May-June-July, 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. 17, Part 1, of the 2005 California Division General Notices.”

The hearing was held in absentia as neither the Claimant or his representative were present at the starting time for the hearing. The Conducting Officer called the Claimants home and had a manager look around the vicinity of the terminal building for him, all to no avail.

They waited a reasonable time and then commenced the hearing.

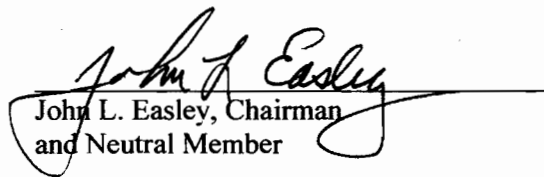
The Claimants lay off record was introduced and indicated a violation of the Carriers attendance policy by some seven days during the three month period covered by the Notice of Hearing.

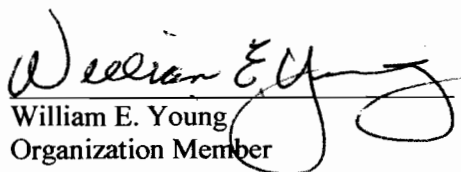
OPINION OF THE BOARD:

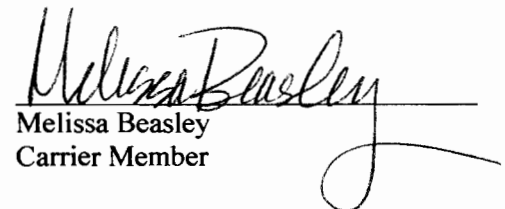
The Organization has raised a procedural objection which must be addressed. Sufficiency of notice, the notice was sent to the last known address of the Claimant but was never picked up regardless of the fact that he had two weeks to do so. He was obviously aware of the hearing as he and his Local Chairman were available at 10:00 A.M. some twenty four minutes after the close of the hearing.

The Board does not concur that there was a procedural defect in the method of notifying the Claimant of the hearing nor in the conduct of the hearing. We also hold that the discipline assessed is within the guide lines of the Attendance Policy and will no be modified.

AWARD: Claim Denied


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa Beasley
Carrier Member