

**PUBLIC LAW BOARD NO 7026**

AWARD NO. 04  
CASE NO. 04

PARTIES TO  
THE DISPUTE

UNITED TRANSPORTATION UNION  
(COAST LINES)

VS

BNSF RAILWAY

ARBITRATOR: John L. Easley

DECISION: Claim Sustained

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of California Division Yardman W. Selles for removal of a ten-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.

Yardman Selles hereinafter referred to as the Claimant was advised 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 1000 hours on Wednesday, September 28, 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 June-July-August, 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 Carrier furnished the Claimants lay off records which indicated he had laid off two days in June, four days in July and four days in August. The Carriers Attendance Policy dictates that an

employee must be full time which they equate to being available 75 percent of the time. The Claimant a regularly assigned Yardman was employed on a five days a week assignment with two assigned days off and under Carrier guide lines would be allowed to be unavailable one assigned work day per calendar month without censure.

The Policy is to take a "rolling three month" period to determine if there was an attendance violation. In this case the attendance records for August were available in the first week of September resulting in the Claimant being cited for a possible violation of the policy for the months of June, July and August.

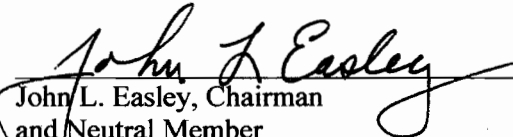
OPINION OF THE BOARD:

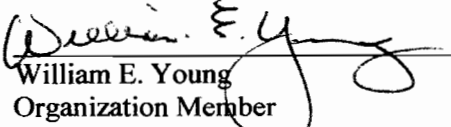
The Organization raised a procedural objection, was the hearing fair and impartial? The Claimant had previously been disciplined for attendance violations for the months of May, June and July now to substitute the month of August for May and issue additional discipline cannot be considered as fair, nor is it impartial when the guidelines do not insist on consistency. Under the hypothesis presented by the Carrier should a five days a week employee mark off for four days in one month it can be used to issue discipline three times placing the employee in a position of jeopardy as one more improper lay off or minor rule infraction he or she would be subjected to possible termination of employment.

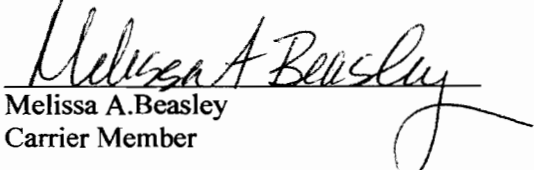
There is mention of additional unpublished guide lines which allow discretion by individual supervisors in the application of the Policy. Such discretion is laudable and would be of benefit in a perfect world. However, we aren't there yet, and such discretion left to interpretation by each supervisor lacks consistency. Policies should be fair, reasonably easy to understand and applied equally.

The Board holds that the method of applying the rolling three month period to determine a potential violation of the Attendance Policy was flawed. The Claimant had previously been censured for the months of June and July therefore August should start a new three month period.

AWARD: Claim Sustained

  
John L. Easley, Chairman  
and Neutral Member

  
William E. Young  
Organization Member

  
Melissa A. Beasley  
Carrier Member