

PUBLIC LAW BOARD NO 7026

AWARD NO. 13
CASE NO. 13

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 L. N. Pensinger for removal of letter of reprimand from his personal record and pay for any time lost while attending the 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 Pensinger hereinafter referred to as the Claimant was instructed to attend a formal investigation as follows in pertinent part:

“Attend formal investigation at the BNSF Conference Room, 1535 North Park Drive, Winslow, Arizona, on Tuesday, August 23, 2005, at 2:00 P. 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 1.3.3 and 1.4 of the General Code of Operating Rules, Fifth Edition, effective April 3, 2005, as supplemented or amended; and BNSF Southwest Division General Notice No. 5, dated October 25, 2004, as supplemented or amended; concerning your alleged failure to perform service as a full time employee in accordance with the BNSF Attendance Guidelines; specifically your alleged absence from duty for 16 week days during the months of May, June, and July, 2005.”

The Claimants lay off record was introduced at the hearing an reflected that he had been off sixteen week days and five week end days a total of twenty one days for the three month period. During this period of time he was involved in a legal dispute concerning various aspect in the dissolution of an eight year marriage. He states that the lay offs involved court dates and conferences concerning said subject matter and that he thought he kept his lay offs within the guide lines of the Attendance Policy.


OPINION OF THE BOARD:

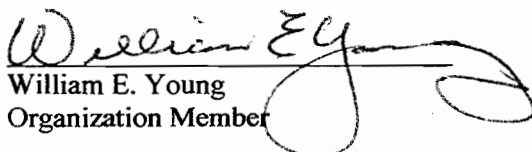
The lay offs were in excess of that which is permissible under the policy. There was an occurrence when he was served with "papers" and needed to get to the Court House the same day and the only way he was able to do so was to lay off falsely claiming illness in the family.

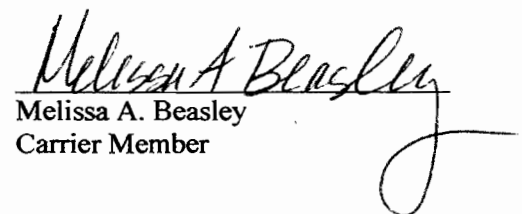
Inasmuch as he was represented by council his need to lay off under false pretense seems somewhat of a stretch. In view of the facts that were presented at the hearing we do not find any mitigating circumstances to modify the discipline.

AWARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member