

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6672**

Parties to Dispute:

UNITED TRANSPORTATION UNION

and

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

OPINION AND AWARD

Case No. 15

Claimant R. H. Williams

STATEMENT OF CLAIM:

“This will present a claim and appeal in behalf of Great Falls, MT Brakeman R. H. Williams for complete record clearance of the entire incident and pay for all time lost attending investigation held January 12, 2001 and reconvening on January 15, 2001, account formal reprimand for alleged violation of GCOR 1.12 (alleged failure to comply with instructions, Attendance Guidelines) on January 8, 2001.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

The record submitted to the Board establishes that Grievant Williams, at the time having approximately 4 years of service with Carrier, was cited on January 26, 2001, for non-compliance with Carrier’s attendance policy following formal investigation held on January 12 and January 15, 2001. Specifically, the transcript of that formal hearing indicates that Claimant was issued a formal reprimand for laying off 10 days in the final quarter of 1999, 3 more than were permitted under Carrier’s attendance policy.

According to the testimony of Great Falls, MT Trainmaster Simmons, in early January, 2001, he received a report on Claimant’s attendance record for the 3-month period ending in December stating that he had been unavailable for 10 days on weekends in September, October and November, 2000. Carrier’s Attendance Guidelines, as

previously published through a Superintendent’s Notice for the Montana Division, provided in part as follows:

“BNSF TY&E employees are key members of our community, and have legitimate expectation of reasonable opportunity to be off from work. And, along with all other members of our community, BNSF TY&E people share certain responsibilities to the community as a whole. One of these basic responsibilities is to be ‘full-time’ employees. The company commits that each TY&E employee in unassigned service fulfills his or her responsibility to maintain ‘full-time’ status, in general, by laying off not more than twenty-five percent of weekdays and weekends in any three month period...”


Concluding that Claimant was allowed 7 weekend days off during the relevant time frame but had been unavailable for 10, Carrier directed Claimant to attend an investigation after which it issued the reprimand here challenged. Simmons testified at that investigation that he had spoken with Claimant on December 15, cautioned him that he needed to be aware of his problem and that Claimant, in turn, informed him of certain ongoing family problems he was facing at the time relating to his daughter’s very serious illness.

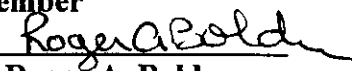
In recognition of the pressing family health issues confronting him at the time and the fact that Carrier’s attendance rules are admittedly guidelines, intended to be administered with due regard for unusual or exceptional circumstances, the Board concludes that Claimant’s appeal should honored. Accordingly, we find that the discipline imposed was excessive and that an oral reprimand would have accomplished Carrier’s legitimate interests in demanding full-time employment from all crafts of employees.

A W A R D

The Claim is sustained. Claimant’s records will be cleared of all references to this violation and the thirty (30) day record suspension related thereto will be removed from his file.


Jay Schollmeyer
Employee Member


James E. Conway
Chairman and Neutral Member


Roger A. Boldra
Carrier Member

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**Dated: March 6, 2009
Great Falls, VA**