

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. 19

Claimant M. J. Benson

STATEMENT OF CLAIM:

“This will present claim and appeal in behalf of Willmar, MN Conductor M. J. Benson for immediate return to service with pay for all time lost account withheld from service since November 4, 1999 per telephone conversation between Claimant and Terminal Manager A. J. Cawson.”

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 establishes that approximately two years after entering service as a Trainman in March, 1997, Claimant began laying off with what Carrier viewed as excessive frequency. As a result, on November 1, 1999, Willmar, MN Terminal Manager A. J. Cawson notified him and three other employees who had laid off over the weekend of October 30-31 of their responsibilities under GCOR Rule 1.17, providing in part that, “Employees are expected to use off duty time so they are prepared to work.” According to the testimony of Mr. Cawson, he advised all four employees on this occasion that if any needed help with personal or medical issues he would make arrangements for the necessary assistance.

Thereafter, at 0603 hours on November 4, 1999, Carrier called Claimant for service. Although he initially accepted that call, it is undisputed that at 0607 he called back and

again laid off for fatigue. At 1145 hours Cawson then called Claimant to inquire about his health in light of the fact that he had laid off five times since October 4. Claimant apparently took offense at the inquiry, accused Cawson of harassing him and, after dispensing some coarse language, advised Cawson that if he wanted to talk they could do so at an investigation. He then hung up.

After Cawson reported the incident to his Medical Department Claimant was placed on Medical Leave effective November 5, 1999, and advised that day that he was being removed from service pending clearance to return. In its letter of November 5, Carrier advised Claimant to contact Field Manager, Clinical & Rehabilitation Services Bob Hosutt for further instructions. Specifically, Cawson advised Claimant as follows:

“Based on your profane & emotional outburst on the telephone and the fact that you have laid off on call twice & fatigued five time since October 4, 1999, you are being placed on a Medical Leave of Absence until Wednesday, November 10, 1999, as I am concerned you cannot safely perform your duties. During this period of time you must contact and consult with Mr. Bob Hosutt, Field Manager, Clinical & Rehabilitation Services...to return to work you must be released by the MEH Dept.”

It is unclear from this record what transpired following Claimant’s removal from service, but it is undisputed that he returned to service on November 30, 1999, following release by Carrier’s medical department and after an inquiry from his UTU Local Chairman. This claim was then submitted on Claimant’s behalf asserting entitlement to pay for time Claimant lost while out of service.

Upon careful review of this record, the Board will deny the claim for the following reasons. Although the Organization takes the position that Claimant acted appropriately in taking proper precautions to lay off when fatigued—a principle with which neither this Board nor Carrier takes issue—and further contends that withholding employees from service does little to resolve fatigue issues, it seems to this Board hard to quarrel with Carrier’s initial assessment that Claimant’s pattern of laying off, especially when viewed in light of his telephone outburst, suggested something more serious may have been at work. The repetitive assertions of fatigue; accepting a call and declining it four minutes later; calling his supervisor a “f...asshole,” are unambiguous indicators of distress. Further,

there is nothing revealed here in Claimant’s prior history of markups and layoffs that would reasonably justify his inability to be rested for work.

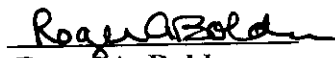
In short, we find that Mr. Cawson appropriately invoked the services of his medical department. By all objective measures, Claimant’s work record was plainly out of compliance with reasonable standards. The Board finds that he was treated reasonably under the circumstances and that accordingly no valid entitlement to reimbursement has been demonstrated.

A W A R D

The Claim is denied.


James E. Conway
Chairman and Neutral Member


Jay Schollmeyer
Employee Member


Roger A. Boldra
Carrier Member

Dated: ~~November~~ ^{Feb 24 2009}, 2008
Great Falls, VA