

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

Parties to Dispute:)
)
)
UNITED TRANSPORTATION UNION)
)
)
 -and-)
)
)
THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY CORPORATION)
_____)

OPINION & AWARD

**Case No. 23
Claimant C.E. Klosterman**

EMPLOYEE’S STATEMENT OF CLAIM:

“This will present claim and appeal in behalf of Vancouver, WA Conductor C. E. Klosterman for pay for all time lost and complete record clearance of the entire incident, account Level 1 Formal Reprimand for alleged violation of GCOR Rule 1.13. (failure to perform service as a full time employee) for absence of 11 weekdays and 13 week-end days during the months of March, April and May 2000.”

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.

By letter dated September 19, 2000, the Organization took exception to Carrier’s issuance of a Level 1 Formal Reprimand assessed Claimant Klosterman on June 29, 2000 for excess absences in violation of GCOR Rule 1.13. Carrier’s action followed a formal investigation conducted on June 20, 2000, after which Carrier determined Claimant had failed to perform service as a full-time employee as a result of 11 weekday absences and 13 week-end days missed during March, April and May, 2000.

As set forth in several companion cases decided concurrently by this Board, the dispute comes to us against a lengthy background of conflict between the parties on attendance issues. Briefly, on or about October 1, 1999, Carrier announced new policy relating to proper procedures to be followed by employees desiring to lay off. (“Availability Policy”)

Although the Organization's challenges to that policy in court and in arbitration on grounds it represented an unlawful unilateral change in the Agreement were not successful, on December 1, 1999, the Carrier nonetheless unilaterally rescinded it. On February 18, 1999, Carrier mailed a revised statement of its expectations regarding attendance to all TY&E employees to be effective March 1, 2000. ("BNSF Guidelines for TY&E Employees Attendance") Pursuant to those amendments, Crew Management would accumulate layoff records for each employee on a rolling 3-month basis and forward it to the Operating Department for review, with any action deemed necessary taking into account the surrounding circumstances of each individual situation and employee. Since paid leave would not be counted for purposes of the Guidelines, application of the policy was limited to unpaid time off.

Although the revised Guidelines were also the subject of challenge, the policy as modified was ultimately found to be reasonable. *See Case No 38 Public Law Board 6345, (Vaughn) (2003) (Attendance Guidelines were properly promulgated by Carrier to effectuate its right to reliable, full-time attendance and were entitled to be enforced; assertion that Guidelines are unclear rejected.)*

In the instant case, it is undisputed that Claimant Klosterman was in unassigned service throughout the three-month period at issue and thus entitled to layoff 25% of his weekdays and 25% of his weekend days. According to Carrier's unchallenged calculations, that meant he was allowed to layoff 5.5 weekdays and 2 weekend days in March; 5 weekdays and 2.5 weekend days in April; and 5.75 weekdays and 2.5 weekend days in May, for a total of 16.5 weekdays and 6.5 weekend days in the three-month period.

Claimant was absent 5 weekdays and 3.5 weekend days in March; 2 weekdays and 4 weekend day in April; and 4 weekdays and 6 weekend days in April, for a total of 11 weekdays and 13.5 weekend days in those months. His weekend absences of 13.5 days, accordingly, exceeded Carrier's permissible threshold of 6.5 weekend days, resulting in imposition of the discipline at issue.

Among the Organization's several arguments in opposition to Carrier's action are the assertions that the Attendance Guidelines are unenforceable as in conflict with the

Agreement and that the Claimant worked a high number of hours during the period, notwithstanding his weekend time missed.

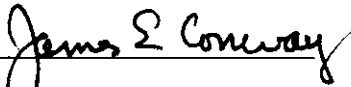
Those contentions mirror the arguments put forth in the several other matters decided concurrently and for similar reasons must be rejected. First, the record affords no basis for concluding that the Attendance Guidelines conflict with any Agreement terms. That argument or variants of it has been presented to and declined by both the United States District Court for the Northern District of Texas, Fort Worth Division, and by several prior Boards.

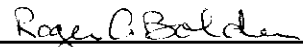
Second, while the Guidelines are not dependent upon an hours-worked analysis, even if that were the case Claimant did not work the number of high hours alleged. In fact, he worked 163.5 hour in March; 110 hours and 10 minutes in April; and 193 hours and 52 minutes in May, averaging 36 hours per week. The significant fact apparent from review of his attendance records, however, is that he was available for only 48% of his weekend days, thus depriving a co-worker of his equitable share of weekend time off and offending the purpose underlying Carrier's policy.

Based upon a careful review of the record, for the reasons stated above the claim must be denied.

A W A R D

The Claim is denied.


James E. Conway
Chairman and Neutral Member


Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Employee Member

Dated: Great Falls, VA
March 11, 2009