

**PUBLIC LAW BOARD NO. 7204**

**UNITED TRANSPORTATION UNION** )  
 )  
**vs.** ) **CASE NO. 6**  
 ) **AWARD NO. 6**  
 )  
**BNSF RAILWAY COMPANY** )

**STATEMENT OF CLAIM:**

Claim in behalf of Great Falls, MT Conductor L.A. Watson for complete record clearance account ten (10) day record suspension for alleged violation of GCOR Rule 1.15 (failure to report for duty at the appropriate time) on July 12, 2004.

**FINDINGS:**

Public Law Board No. 7204, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, L.A. Watson, had been employed by the Carrier for approximately one year. On July 14, 2004, the Carrier charged Claimant to attend an investigation "for the purpose of ascertaining the facts and determining responsibility, if any, in connection with your alleged failure report for work at the designated time and place when called for duty at 1230 hours on July 12, 2004 for Train M-LAUSWE1-11 at Great Falls, Montana." Following the investigation, Claimant was found guilty of the charge and assessed a 10-day record suspension.

The evidence presented at the investigation established that on July 12, 2004, Claimant arrived at his Shelby, Montana, work location at about 12:20 p.m., 10 minutes before his 12:30 p.m. start time. Claimant testified that he asked the Yardmaster if it would be alright for him to drop off paperwork at his father's nursing home and "come right back." Claimant added that the Yardmaster said yes, and he therefore saw no need to contact his supervisor. Claimant returned at approximately 12:50 p.m.

The Carrier's witnesses presented testimony that Claimant came in early, informed the Yardmaster that he had to leave, and did so. The Carrier also presented evidence establishing that Claimant's supervisor, and not the Yardmaster, would have the authority to allow an employee to arrive late. Claimant's supervisor was at the yard at the time, but Claimant did not request permission from him.

The Carrier first points out that it is undisputed that Claimant was not on-duty at the appointed time and place on July 12, 2004. The essential question, the Carrier states, is whether Claimant had the Yardmaster's permission to run a personal errand, and, as a result, arrive for work late. The record, the Carrier asserts, demonstrates that the question must be answered in the negative.

The Carrier notes that Claimant simply testified that he "requested" to run an errand; he did not state that he asked for permission to do so or informed the Yardmaster that he would be late. The Yardmaster, the Carrier states, recalled that Claimant simply told him that he had an errand to run and would be right back. Further, the Carrier points out, the Yardmaster would not have authority to grant an employee's request to arrive for work late, and would not have jeopardized his position to accommodate Claimant's personal request. In addition, the Carrier states, Claimant acknowledged that he did not ask his supervisor for the requisite permission. For all of these reasons, the Carrier concludes, Claimant is guilty of the charges, the Carrier acted appropriately in assessing him a 10-day record suspension, and the claim should be denied.

The Organization asserts that on the day in question Claimant arrived for work 10 minutes early, and promptly contacted the Yardmaster and requested that he be allowed to leave for a short time to deliver sensitive paperwork to his father's nursing home. The Organization contends that the request was made to the proper individual, who did not deny it, and Claimant therefore had every reason to believe permission had been granted. The Organization asserts that the Carrier has failed to meet its burden of proving that Claimant violated any rules, and the claim must be sustained.

We have carefully reviewed the record in its entirety. While Claimant testified that he requested permission to leave work, the Carrier's evidence was that Claimant, without contacting his supervisor, simply informed the Yardmaster that he had to leave to run a personal errand and would be right back. It is well established that the Hearing Officer, not this Board, is charged with resolving conflicting testimony, and we will therefore not disturb the Carrier's determination that Claimant did not have authority to leave. In addition, even by Claimant's own testimony, he merely informed the Yardmaster that he would be "right back," without giving him a time frame or indicating that he would be late. Thus, Claimant's guilt has been proven by substantial evidence. We cannot say that the Carrier's determination that a 10-day record suspension was appropriate was an unfair, arbitrary or discriminatory exercise of its managerial discretion.

AWARD

Claim denied.

  
JACALYN J. ZIMMERMAN

Neutral Member



ROGER BOLDRA

Carrier Member



J.L. SCHOLLMEYER

Organization Member

Dated this 31<sup>ST</sup> day of March, 2009.