

PUBLIC LAW BOARD NO. 7204

UNITED TRANSPORTATION UNION)	
)	CASE NO. 10
vs.)	AWARD NO. 10
)	
BNSF RAILWAY COMPANY)	

STATEMENT OF CLAIM:

Claim and appeal in behalf of Great Falls, MT Conductor R.J. Giard for immediate return to service, pay for all time lost and complete record clearance account dismissed from service for violation of GCOR Rule 1.16 (missed call) on December 16, 2005.

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, R.J. Giard, had been employed by the Carrier since 2003. On December 20, 2005, Carrier charged Claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with a missed call on December 16, 2005. Following the investigation, Claimant was found guilty of violating Rule 1.16 of Carrier's General Code of Operating Rules and dismissed from service. Rule 1.16 requires an employee subject to call to indicate where he can be reached and not absent himself from that call location without notifying appropriate Carrier personnel.

The facts of this case are not in dispute. Claimant's personal record shows that he was issued a formal reprimand on January 25, 2005 for attendance violations, a 10-day record suspension on February 8, 2005 for a missed call, a 20-day record suspension on April 29, 2005 for a missed call, and a 30-day record suspension on September 16, 2005 for attendance violations. Thus, pursuant to Carrier's Policy for Employee Performance Accountability, Claimant was subject to dismissal for another rule violation within a 12-month period.

On December 16, 2005, the Carrier's crew office called Claimant five times, beginning at 2215 and ending at 2230, but was unable to reach him. Claimant testified at the investigation that he was three times out, so he thought he could put his cell phone in his truck to charge while he was at dinner. After 20 minutes, he stated, he went out to the

truck, saw he had missed a call, and called Carrier's crew caller. However, he was told he was too late to come to work. Claimant acknowledged that he had not complied with Rule 1.16.

The Carrier contends that it is undisputed that Claimant missed a call for service, and Claimant admitted he violated Carrier Rule GCOR 1.16. The only issue, the Carrier states, is whether dismissal is appropriate.

The Carrier states that Claimant exercised poor judgment when, knowing he was three times out, he plugged his cellular phone into his truck to charge, making himself unavailable. This action further demonstrates, the Carrier contends, that Claimant failed to learn from his previous two missed calls earlier in the year. The Carrier notes that, not counting the instant event, Claimant had been disciplined four times for attendance and missed-call issues. Claimant was properly subjected to progressive discipline, and, the Carrier notes, this event was the culmination of his poor conduct. The Carrier concludes that its action was not arbitrary or excessive, and the claim should be denied.

The Organization acknowledges that Claimant missed five attempts by the crew office, within a 15 minute period, to be contacted for a call. However, the Organization notes, Claimant testified that he was three times out so it thought it safe to put his cell phone in his truck to charge it. As a result, he missed the Carrier's call. The Organization stresses that Claimant went back to the truck, saw that he missed a call, and called the crew caller. However, the Organization notes, the crew caller told him that he was too late to come to work. The Organization stresses that only 20 minutes had passed from the Carrier's first attempt to contact Claimant until he responded.


The Carrier, the Organization concludes, offered no logical explanation for refusing to allow Claimant to protect his call. Dismissal under these circumstances is excessive, the Organization urges, and the claim should be sustained.

The Board has carefully reviewed the record in its entirety. There is no question, and Claimant admitted, that he missed a call, in violation of Carrier rules. Thus, his guilt has been proven by substantial evidence. While the Organization argues strongly that the penalty was excessive, we cannot agree. Claimant had four previous, similar violations within a short period of time, and had to know that the next offense could subject him to dismissal. Nevertheless, he engaged in careless behavior which caused him to miss a call and commit his fifth violation. Apparently, the previous discipline had not impressed upon Claimant the seriousness of the situation and caused him to change his behavior. Under these circumstances, we cannot say the Carrier's determination that dismissal was appropriate was an unfair, arbitrary or discriminatory exercise of its discretion.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


ROGER BOLDRA
Carrier Member


J.L. SCHOLLMAYER
Organization Member

Dated this 31st day of March, 2009.