

PUBLIC LAW BOARD NO. 5939

Case No. 47  
Award No. 47

PARTIES TO DISPUTE:            **BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS & TRAINMEN**

-and-

**BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim on behalf of Engineer Brain H. Fransen for removal of discipline (10-day record suspension) from his personal record and that he be made whole for all lost time.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The Claimant entered the Carrier's service as a Brakeman on April 15, 1993. In 1995, he was promoted to a Locomotive Engineer. In September 2003, the Claimant was assigned to the Engineers' extra board at Gillette, Wyoming.

The facts that led to this claim are not in dispute. On September 12, 2003, the Claimant was called off the extra board for Train NAMSFKO-57 with an on duty time of 12:15 p.m. He was not available for the call since he was attending a real estate closing and had turned off his cellular telephone.

The Claimant was notified to attend a formal investigation to ascertain the facts and determine his responsibility, if any, for his alleged failure to be available for call and for absenting himself from duty on September 12, 2003. The investigation was held on October 2, 2003. On October 28, 2003, the Claimant was assessed a 10-day record

suspension for his purported violation of Rule 1.15 and Rule 1.16 of the Carrier's General Code of Operating Rules.

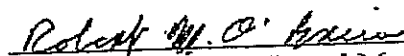
At the October 2, 2003, formal investigation, the Claimant admitted that he did not have authority to be absent from his calling place on September 12, 2003, and that he missed a call as a result. He recognized that he violated Rule 1.15 and Rule 1.16 of the General Code of Operating Rules.

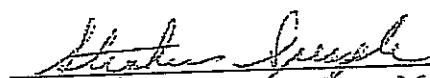
The Claimant knew that he had a real estate closing scheduled for September 12, 2003. He had requested a personal leave day but never contacted any Carrier officer to determine if his request had been approved even though he observed in the computer that he did not have personal leave on September 12, 2003.

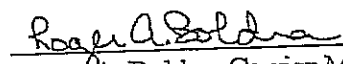
Obviously, the Carrier was justified in disciplining the Claimant for his admitted violation of Operating Rules 1.15 and 1.16. However, inasmuch as the formal reprimand assessed the Claimant for laying off on call on August 22, 2003, was ordered removed by this Board in Award No. 46, his missed call on September 12, 2003, was his first violation under the Carrier's Policy for Employee Performance Accountability. Accordingly, he should have been issued a formal reprimand for this violation, not a 10-day record suspension. Therefore, the Carrier is directed to change the Claimant's discipline to a formal reprimand.

AWARD: Claim sustained to the extent indicated in the Findings.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.

  
Robert M. O'Brien, Neutral Member

  
Stephen D. Speagle, Employee Member

  
Roger A. Boldra, Carrier Member

Dated: Oct 3, 2006