

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 28582  
Docket No. 48434  
17-1-NRAB-00001-150230**

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**PARTIES TO DISPUTE:** ( **(Brotherhood of Locomotive Engineers and Trainmen**  
( **(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“It is hereby requested that Engineer B. M. Johnson’s discipline be reversed with seniority unimpaired, requesting pay for all lost time, with no offset for outside earnings, including the day(s) for investigation, with restoration of full benefits, and that the notation of Dismissal be removed from his personal record, resulting from the investigation held on October 14, 2014.”**

**FINDINGS:**

**The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

**By notice dated August 14, 2014, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had failed to perform service as a full-time employee for the rolling three months of May, June, and July 2014.**

The Investigation was conducted, after three postponements, on October 14, 2014. By letter dated October 29, 2014, the Claimant was notified that as a result of the Hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence conclusively establishes that the Claimant was excessively absent and is guilty as charged, because the Organization's arguments are without merit, and because the discipline assessed was appropriate. The Carrier also asserts that any award of backpay should be offset by any outside earnings while the Claimant was dismissed. The Organization contends that the instant claim should be sustained in its entirety, without any offset of outside earnings, because the Carrier failed to establish substantial evidence of wrongdoing by the Claimant, and because the discipline imposed was unwarranted.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the Carrier's Attendance Guidelines during the three-month period between May and July of 2014. The record reveals that the Claimant had a maximum lay-off threshold of three "any" days and it was proven during the investigation that he was unavailable on five days, thereby exceeding the maximum allowable threshold by two days. Although the Claimant was dealing with serious family medical issues, he was ineligible for FMLA because he did not have the required number of minimum hours to qualify for FMLA. Consequently, the Claimant was clearly in violation of the Carrier's Attendance Policy when he was absent in an excessive manner over the three-month period.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant's disciplinary record is very poor and includes ten marks of discipline for failing to comply with the Attendance Guidelines. In addition, the

Claimant was issued a Level S record suspension for misuse of FMLA and a Level S record suspension for low hours. Given the Claimant's poor disciplinary record, coupled with the most recent violation, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division**

Dated at Chicago, Illinois, this 25th day of October 2017.