

**BEFORE  
PUBLIC LAW BOARD NO. 7499  
CASE NO. 13  
AWARD NO. 13  
NMB Subject Code: 106**

<b>BROTHERHOOD OF RAILROAD SIGNALMEN</b>	)	
(Organization file: 11-011-BNSF-20-C)	)	<b>PARTIES TO THE</b>
<b>vs.</b>	)	<b>DISPUTE</b>
<b>BNSF RAILWAY COMPANY</b>	)	
(Carrier file: 35-11-0027)	)	

**STATEMENT OF CLAIM:**

*“Carrier should immediately clear Mr. Crowley's personal record of any reference to the discipline or this event.”*

**FINDINGS:**

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated June 22, 2011 that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on September 9, 2010, the Claimant was working as a Signal Maintainer out of St. Joseph, MO for the Carrier. It is undisputed that the Claimant failed to show up for work, as scheduled, at 4:00 a.m. on September 9, 2010.

As a result, the Carrier held an investigation, after 3 agreed-upon postponements, on February 11, 2011. The Carrier assessed the Claimant a 20-day Record Suspension on March 8, 2011 for his violation of Maintenance of Way Operating Rule (MOWOR) 1.15. The Organization appealed this discipline through the proper process under the Collective Bargaining Agreement between the parties. The parties have been unable to resolve this issue and, after an on-property conference, they have placed the issue before this Board for adjudication.

The BNSF MOWOR 1.15 states:

*“1.15 Duty—Reporting or Absence  
Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.”*

**Organization Argument:**

The Organization says that the employee had good reason to not be available for work at the appointed time. They say that the Claimant had been investigated the day before this incident, also for being late for work. After that investigation, the Claimant was allegedly up all night vomiting blood and excreting blood in his stools. The Claimant also says that after eating dinner that night he vomited it up in the restaurant. They say that the morning in question saw the Claimant still ill, and at times unconscious, in the company-provided lodging. They say that the Claimant attempted to call his supervisor a number of times on the morning of September 4. The Claimant says that he spoke with his supervisor sometime between 4 and 6 AM to advise him that he was ill but still wanted to come to work. During the course of the supervisor driving back from the worksite to pick up the Claimant, the Claimant called again. This time he asked to go to the hospital. The supervisor drove the Claimant to the hospital. The Organization says that the Claimant was given medication and told to rest for 8 hours before being driven home. As the Claimant did not have his personal vehicle at the motel in question, the supervisor drove him home where the Claimant sought further medical attention. Once home, the Organization says that the Claimant was admitted by his doctor into the hospital for surgery on two bleeding ulcers. The Carrier agreed to postpone the scheduled investigation until the Claimant was physically able to return to service from his surgery.

The Organization believes that the above circumstances make it understandable and allowable for an employee to be late or excused by the Carrier for a day of work. As a result, they say, any discipline should be stricken from his record.

**Carrier Argument:**

The Carrier says that it is undisputed that the Claimant did not report for duty at 4 AM at the company work truck in the motel parking lot on the morning of September 9, 2010 as required by the rule and the instruction of his supervisor.

The Carrier says that, while it may be true that the Claimant did have a health issue, for which they agree he was granted a medical leave of absence, there is no actual evidence to support the severity of the illness or the Organization's characterization of that illness as life-threatening. They say that there are only two exhibits entered during the investigation concerning the Claimant's illness – a simple doctor's note indicating that the Claimant should be off work from the 9th to the 14th of September and the Carrier's Employee Medical Leave form, which they say contains no information concerning the illness or its severity. They say that nowhere is there any mention of the seriousness of the Claimant's condition or that it justifies his failure to contact the Carrier before 4 AM.

They say further that the Claimant can't refuse to provide information concerning his medical status and then claim that everyone should have just known. They say that several attempts were made to obtain information regarding his condition by his supervisor and the medical department while he was in the first hospital but that the Claimant refused to release any details to them. They say that it is the employee's responsibility to communicate with the appropriate individual that he would not be on time or would be absent before the start of assignment for that day. They say that it is not the Carrier's responsibility to call an employee to find out why he did not show up. They further say that both the supervisor and the foreman testified that they did not receive a call from the Claimant until shortly after 6

AM – some two hours after the designated start time. Thus, they say, the Claimant is guilty of a violation.

**Result:**

This Board finds that the Claimant did not call the foreman until after his designated start time. However, in certain very rare situations, while there may be an apparent rule violation, this violation might be excusable. For example, if an employee is en route to work and is in a car accident and rendered incapacitated, it would be, in the view of this Board, totally unreasonable to discipline an employee for failure to call in while incapacitated.

A review of the medical evidence in this case reveals that it does only consist of a simple doctor's note on a prescription pad and the Carrier's Employee Medical Leave form. However, with respect to the Carrier's argument that the Claimant failed to disclose the details of his medical ailment, the form itself is instructive. It specifically says that "the physician statement should not include any medical information." This is only proper. A Carrier supervisor is not a medical professional. The supervisor need only know that the employee is off for a legitimate medical reason, the expected date of return and any medical restrictions that may attach at the time of the return. On the other hand, the Medical Department may well seek further medical details to ensure the legitimacy of any leave of absence. While a few doctor's notes on a prescription form may seem scanty, it is undisputed that the Claimant was granted a legitimate medical leave by the Carrier from September 9, 2010 through approximately the time of this investigation on February 11, 2011. Presumably the Medical Department of the Carrier was sufficiently satisfied with the medical information it must have received to grant this leave of absence. It is not up to this Board, nor to the supervisors involved, to second-guess the legitimacy of this medical assessment.

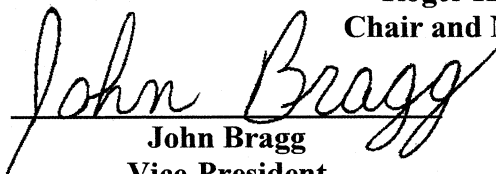
Having found sufficient evidence of a medical issue on the date in question, this Board finds that the Carrier has failed to meet its onus of proof to substantiate any discipline in this instance.

**AWARD**

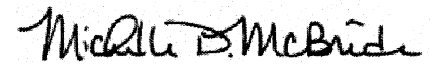
The claim is sustained.



**Roger K. MacDougall**  
Chair and Neutral Member



**John Bragg**  
Vice-President  
Employee Member



**Michelle McBride**  
Director Labor Relations  
Carrier Member

Dated: 6/29/12

At: Chicago, IL