

**BEFORE  
PUBLIC LAW BOARD NO. 7499  
CASE NO. 16  
AWARD NO. 16  
NMB Subject Code: 106**

<b>BROTHERHOOD OF RAILROAD SIGNALMEN</b>	)	
(Organization file: 11-017-BNSF-121-T)	)	<b>PARTIES TO THE</b>
vs.	)	<b>DISPUTE</b>
<b>BNSF RAILWAY COMPANY</b>	)	
(Carrier file: 35-11-0033)	)	

**STATEMENT OF CLAIM:**

*“Carrier should now be required to remove all discipline imposed upon Mr. Fowler and immediately clear his record of any part of this incident. He should be immediately returned to work, be paid for all time lost and all his employment rights restored as if he was never dismissed.”*

**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 for the relevant time in question, from December 2010 through April 2011, the Claimant was a Signal Maintainer on mobile gangs for the Carrier. At the time, he had worked for the Carrier for approximately 34 years. In December 2010, the Claimant used vacation to address an ongoing medical condition. This was done with the consent of his supervisor. The Claimant agreed to contact his supervisor by January 3, 2011 if he needed additional time off in 2011. Even though he continued to be absent from his assignment, the Claimant failed to contact his supervisor as required. After attempting to contact the Claimant by telephone, which was unsuccessful, the supervisor sent him a certified letter on January 12, 2011. The letter was returned to the Carrier as undeliverable. The United States Post Office notified the Claimant twice that he had a certified letter, before returning it to the Carrier on February 8, 2011. The Claimant was sent another certified letter on February 9, notifying him that he was being placed on a medical leave of absence through February 17. In that letter, he was instructed to contact the Carrier’s Medical Department and follow their instructions. These instructions included having his physician complete a medical status form, by February 17, in order to maintain his medical leave of absence. The Claimant did not provide the requested documentation to support a continued medical leave by the specified date.

As a result, the Carrier sent a Notice of Investigation to the Claimant on March 4, 2011. This letter was delivered to the Claimant's home on March 8. There were then a series of agreed-upon postponements. The Carrier held an investigation on March 25, 2011. Even though the Organization's representative attended the investigation and attempted to

contact the Claimant twice during the course of the investigation, the Claimant did not appear at the investigation and did not respond to the Organization's attempt to contact him. The Carrier assessed the Claimant a 30-day Record Suspension on April 21, 2011 for his violation of Maintenance of Way Operating Rule (MOWOR) 1.13. 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 Rules in question states:

***“1.13 Reporting and Complying with Instructions***

*Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.”*

**Organization Argument:**

The Organization argues that the Claimant was denied a fair and impartial investigation because he did not know of the investigation. With respect to the letter requesting further medical information, they say that there is no proof that it was delivered to the Claimant. They also say that the Claimant did correspond with the Carrier to the best of his ability. They say that his medical ailment made it difficult to actively communicate with the Carrier. They say that the Carrier has the burden of proof to prove the charges against the Claimant and that they have failed to do so.

**Carrier Argument:**

The Carrier says that the Claimant did contact the Medical Department on February 16, 2011. The Claimant was told to contact his supervisor to obtain a medical leave of absence. On February 17, the Medical Department sent the Claimant a short letter with a medical status form attached. The Carrier also points out that the certified letters sent to the Claimant were signed for on March 8, 2011 and March 14, 2011 by a Sandra Fowler at the address to which all correspondence had been sent and which was in the Carrier's system. On March 24, 2011 the Claimant faxed a hand written letter, along with a doctors' note dated March 15, 2011. They further say that the Claimant called his supervisor a few days after the February 9, 2011 letter was sent out, even though he allegedly never received it, to discuss his condition. The Carrier says that the Claimant failed to appear at the investigation even though they had attempted to contact him repeatedly, as had his Organization representative.

**Result:**

This Board finds that despite claims to the contrary, considering all the facts in the record, there are sufficient indications that the Claimant did receive all of the correspondence in question. It is inconceivable that the signatures combined with his contact with the Carrier at various times shortly after letters were sent were purely circumstantial. Therefore, this Board finds that the Claimant was properly notified of the investigation and simply chose not to attend. He did so at his peril.

It is also evident that, while the Claimant may well have had a legitimate medical condition, he failed to comply with the reasonable instructions of the Carrier with respect to notification and documentation required by the Medical Department.

As a result, despite the valiant attempts of the Organization to contact the Claimant and to ensure his attendance at the investigation, the evidence of the Carrier is basically uncontroverted by the Claimant.

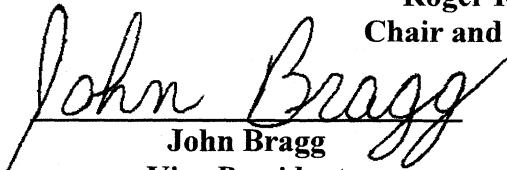
Even though this is a very long service employee, he still needed to comply with the reasonable instructions concerning his medical documentation. It seems that the Carrier even granted a series of extensions and did not levy discipline as early as it might have. This Board therefore finds that the assessment of the discipline by the Carrier was not unreasonable.

**AWARD**

The claim is denied.



**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