

**PUBLIC LAW BOARD NO. 7293**

**PARTIES ) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE) BNSF RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

**Appeal on behalf of Quanah, Texas Conductor R. Maldonado III and Brakeman L. J. Carr, Jr. for removal of a Level S 30 Day Record Suspension and 3 Year Review Period from their personal records and pay for all time lost as the result of an investigation held on June 15, 2010. (Organization File D-1887; Carrier File 55-10-0072)**

**FINDINGS:**

**The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.**

**By letter dated May 11, 2010 the Claimants, together with the Engineer for their train assignment on May 7, 2010, Engineer Winters, were instructed to report for a joint investigation for the purpose of ascertaining the facts and determining their responsibility, if any, in connection with a charge of "alleged failure to perform service as instructed, specifically your failure to complete your assigned work and leaving early without permission." The notice of investigation went on to state: "You are also charged with your alleged failure to follow instructions and conduct unbecoming in connection with this incident. The alleged violations occurred while you were called as crew members on train LTEX4031071 on May 7, 2020 on duty at 1500 hours."**

**Following the company investigation, at which the Claimants and Engineer Winters were present and duly assisted in a defense against the charge of record, the Claimants and Engineer Winters were each notified by letters dated June 28, 2010 that the Carrier had determined from testimony and exhibits brought forth at the investigation that in a dereliction of duties they caused a delay to the LTEX4031071 by failing to operate their train as scheduled; they were guilty of a failure to follow instructions; and they had engaged in conduct unbecoming in connection with this incident. The Claimants and Engineer Winters were held to have violated GCOR 1.13, Reporting and Complying with Instructions, GCOR 1.29, Avoiding Delays, GCOR 1.47, Duties of Crew Members, and GCOR 1.6, Conduct, and each of the**

crew members was assessed discipline of a 30 Day Record Suspension and 3 Year Review Period.

Appeal of the above mentioned discipline that was made on behalf of the Claimants in this case was denied by the Carrier, and the instant claim was placed before this Board for review and adjudication.

As concerns appeal of discipline accorded Engineer Winters, the Organization especially directs the Board's attention to a letter dated August 19, 2010 from the Carrier's General Manager for the Texas Division to the Local Chairperson for the Organization, which letter reads as follows:

I am in receipt of your letter of appeal on behalf of Mr. D. A. Winters, dated July 19, 2010.

After a thorough review of the transcript of the investigation held on June 15, 2010, I have concluded that the carrier failed to clearly prove the charges that were brought against Mr. Winters.

The Level S 30-day Record Suspension that was issued to Mr. Winters will be removed from his personal file.

In view of the above letter exonerating Engineer Winters from all responsibility for the incident the subject of investigation or, principally the same charges as brought against the Claimants in the joint investigation, the Organization maintains that the Claimants have been treated disparately as concerns the assessment of discipline.

Contrary to Organization contentions, the Carrier says that the Claimants have not been subjected to disparate treatment. In final appeal of the claim the Carrier says: "Mr. Winters was not the regularly assigned Engineer on the LTEX403 having been called off the extra board at Oklahoma City, Oklahoma and arguably was not aware that the crew did not have blanket permission to leave work undone in order to obtain an 'early quit.'"

The Board is not persuaded by Carrier argument that Engineer Winters had nothing more than a passive role in the actions of the crew that gave cause for the disciplinary sanctions. This belated contention about Engineer Winters having come off the extra board at Oklahoma City as justification for removal of discipline for Engineer Winters does not overcome the Carrier having said that it because the investigation "failed to clearly prove the charges that were brought against Mr. Winters." As the Organization submits, the referenced charges were the same as those brought against the Claimants in a joint investigation.

There is no question that Engineer Winters, with six years of service, together with the Claimants, both with over four years of service, each left much to be desired by reason of their actions in not completing assigned work and leaving their assignment early without permission. As with all employees it would seem that Engineer Winters as well as the Claimants knew or should have known that a failure to perform work as directed or to leave work early without tacit permission of a supervisory official will subject an employee to discipline.

In view of the particular state of the record in this case the Board finds that it must be concluded, as held in numerous past decisions of boards such as this, that discipline must be administered equitably. Accordingly, the Board will direct that discipline as administered the Claimants be removed from their personal records.

**AWARD:**

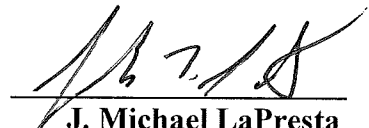
Claim sustained.



Robert E. Peterson  
Chair & Neutral Member



Andrea N. Smith  
Carrier Member



J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: 9/20/17