PUBLIC LAW BOARD NO. 7421

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

STATEMENT OF CLAIM:

Claim of Illinois-Wisconsin Seniority District (Galesburg) Conductor Travis L. Billeter for removal of censure from his personal record (Standard Formal Reprimand) and pay for all time lost as the result of an investigation held on February 27, 2017. (UTU File No. D195-088-17E; Carrier File No. 51-17-0154D)

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.

This case arises out of a Carrier determination that testimony and exhibits at a February 27, 2017 investigation support a finding that the Claimant violated the Attendance Guidelines when he exceeded his absence threshold for the three-month period ending with the month of January 2017.

According to the record, the Claimant had a threshold of 14 weekdays and four weekend days, measured separately, for the three-month rolling period and was unavailable six weekdays and five weekend days, exceeding his weekend threshold by one day.

In defense of the Claimant the Organization offers argument that the Claimant had a reduced threshold of allowable absences for the three-month period due to having been force assigned by the collective bargaining agreement to a job with assigned rest days and that the Claimant had exercised his seniority at the first opportunity to avoid "mixed service." The Organization therefore says that this happenstance should be recognized as a mitigating circumstance in application of the Attendance Guidelines.

In response to the above Organization contentions, the Carrier says being force assigned is not an excuse for violating the Attendance Guidelines and that it is evident from testimony of the Claimant at the investigation that he was aware that his threshold was going to be lowered and those days would then be subtracted from his threshold time.

In this latter regard, after the Claimant stated at the investigation that he was forced to an assignment, he was asked if he knew those days would then be subtracted from his time, the Claimant said: "Um, according, yes, sir."

The Board has given study to Organization procedural argument that the transcript of hearing shows several fatal errors occurred during the investigatory process and deprived the Claimant of a fair and impartial hearing. We find these Organization contentions to be without merit or not of sufficient substance to justify a sustaining award.

The evidence of record supporting the conclusion that the Claimant was responsible for a violation of the Attendance Guidelines, the claim to expunge discipline of a Standard Formal Reprimand from the Claimant's record will be denied.

AWARD:

Claim Denied.

Robert E. Peterson
Chair & Neutral Member

James K. Hurlburt
Carrier Member

Nathan R. MacDonald
Organization Member

Fort Worth, TX
Dated: March 08, 2019