

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Conductor Michael J. King for removal of censure from his personal record of a Level S 30 Day Record Suspension and pay for all time lost as a result of an investigation held on July 26, 2016. (Organization File No. D607-256-16A; Carrier File No. 55-16-0070D)

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.

Discipline in this case, a Level S 30 Day Record Suspension and 3 Year Review Period, arises out of the Carrier's application of its Low Performance Review Process (LPRP) policy. The Claimant is being disciplined for what the Carrier says is a failure on the part of the Claimant to comply in May 2016 with instructions that had been given to him at a coaching and counseling session on January 14, 2011 by a Trainmaster for low performance and availability during the month of December 2010. At that time (December 2010) the Claimant was found to have worked 18.7 hours, or 26% of his total 104.3 hours of work potential for the month of December 2010. The Claimant was notified by subsequent letter of January 17, 2011 to reduce an alleged practice of "timed layoffs" and to maintain his work performance in such a way that he conforms each month to the performance levels expected of a full-time employee compared to his peers.

It is the position of the Carrier that the Claimant failed to comply with the above referenced January 2011 instructions in a manner that was comparable to his peers in the month of May 2016 when he only worked six starts, totaling 53.8 work hours, which was 38% of his 142.2 hours of work potential for the month. This, the Carrier says, was the least percentage of time required at the terminal and the seventh least of any employee in train and engine service on the Heartland Division.

The arguments of the Organization in defense of the Claimant are not too unlike those advanced to the Board in Case No. 148, Award No. 148, involving a LPRP dispute similar to that in the dispute here at issue.


For the same reasons as set forth by the Board in its Findings in disposition of Case No. 148, the claim in the instant dispute will likewise be sustained.


Award:


Claim Sustained.

Order:

The Carrier is directed to make this award effective within 30 days of the date listed below.


Robert E. Peterson
Chair & Neutral Member


James K. Hurlburt
Carrier Member


Nathan R. MacDonald
Organization Member

Fort Worth, TX
Dated: Dec. 7, 2016