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June 5, 2017

**TO: Local Chairmen GO-001**

**RE: Public Law Board No. 7425**

Enclosed for your information and files are copies of Award 53 and Awards 60 through 87 of Public Law Board No. 7425 that were recently rendered on our property by Neutral Robert E. Peterson.

**Award No. 53:** Remanded the issue to the parties. Time claim was made for an extra Switchman on a former Great Northern yard extra board forced to protect a road assignment with a start time outside of those contained in the schedule rule. We argued that “hours of protection” of “calling hours” were incorporated in the agreement when calling a GN extra switchman based on schedule rules and past practice. The Neutral found that certain elements of past practice existed but the threshold required to demonstrate incorporation into the collective bargaining agreement was not met. He instructed the parties to settle the issue through negotiation rather than impose conditions which, based on the language of the Award, could be detrimental to current practices.

**Award No. 60:** Denied the claim of an Engineer for removal of censure (Level S 30-Day Record Suspension) account alleged failure to conduct a Class III air test following a change in the locomotive consist. The Claimant stated in the hearing that the locomotive download indicated that the test was not performed. The Neutral found that the violation did occur and that the Carrier was within its rights to deny Alternative Handling for the event.

**Award No. 61:** Denied the claim of a Conductor for removal of censure (Level S 30-Day Record Suspension) account alleged use of an electronic device in the locomotive cab. The Engineer was dismissed for listening to a satellite radio program and sending incriminating messages via Twitter that the crew was listening; his dismissal was upheld by PLB 5939 Award No. 165. The locomotive download showed that the train was moving at the time of the messages. The Neutral did not believe that the Claimant was unaware that the device was playing a radio broadcast or that the Engineer was communicating via Twitter; he found that the Claimant had, but did not meet, a responsibility to have taken action.

**Award No. 62:** Denied the claim of a Student Engineer for removal of censure (10-Day Record Suspension) account allegedly failed to comply with the Road Foreman’s instructions regarding the timing, frequency and type of student trips. The Neutral determined the Carrier met the burden of proof and that discipline was properly assessed.

**Award No. 63:** Denied the claim of an Engineer for removal of censure (30-Day Level S Record Suspension) and pay for all time lost account passing an absolute signal displaying a stop indication. The Board held the Carrier had shown sufficient support for its imposition of discipline.

**Award No. 64:** Denied the claim of an Engineer for removal of censure (30-Day Level S Record Suspension) and pay for all time lost account operating past a stop signal without proper authority. The Board held the Claimant was proven guilty of a serious offense and found no basis to conclude that discipline was harsh or unreasonable.

**Award No. 65:** The parties agreed to withdraw the claim. A close inspection of the Claimant's personal record indicated that discipline had previously been removed.

**Award No. 66:** Denied the claim of a Conductor for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account failure to properly ride moving equipment. The Board held the Carrier had proven their case and, based on the Claimant's personal record, the discipline assessed was not harsh or unreasonable.

**Award No. 67:** Denied the claim of a Yardman for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account failure to protect a shoving movement. The Claimant admitted guilt and the Board was not persuaded by the Organization's argument that because the Claimant was a relatively new employee, the incident should be viewed as an unfortunate happenstance. Based on the record, the Board held that the Carrier had met its burden of proof for the discipline assessed.

**Award No. 68:** Dismissed the case as the Parties had settled it previously.

**Award No. 69:** Denied the claim of an Engineer for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account negligence and indifference to duty when he failed to immediately report a ride quality incident and possible track defect. The Claimant's record showed he had been disciplined 4 years earlier for late reporting of a personal injury and was, at the time of the instant case, still within a 1-year probationary period stemming from another Level S 30-Day Record Suspension. The Board held the Carrier had met its burden of proof and the discipline assessed was not harsh or excessive.

**Award No. 70:** Denied the claim of a Conductor for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account failure to properly protect and control a road switcher shoving movement. The Board held that the Carrier had met its burden of proof and the penalty imposed was neither harsh nor unreasonable.

**Award No. 71:** Sustained in part the claim of an Engineer for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account failure to secure a proper Track Warrant and using a Track Warrant not assigned to his train. Although the Board found there was sufficient evidence to warrant discipline, it did not warrant the severity of the penalty imposed and ordered the discipline reduced to a Standard Formal Reprimand without pay for time lost.

**Award No. 72:** Sustained in part the claim of a Conductor for removal of censure (Level S 30-Day Record Suspension) and pay for all time lost account failure to secure a proper Track Warrant. The Claimant in this case was from the same crew as the Engineer in Award No. 71 of this same Board and held the discipline should likewise be reduced to a Standard Formal Reprimand for the same reasons as set forth in the previous Award.

**Award No. 73:** Sustained the claim of a Conductor for removal of censure (Level S, 30 Day Record Suspension) account allegedly jointly responsible when his train passed a stop indication without authority. The Neutral agreed with our argument that Conductors and Engineers engage in separate duties. In this instance, a Student Engineer was running the train while the Engineer was checking his rulebook for track speed. Also, the Claimant initiated the emergency break when he noticed the Student Engineer not responding to the signal aspect. Therefore, the circumstances involved in this case did not warrant the imposition of discipline.

**Award No. 74:** Sustained the claim of a Conductor for removal of censure (Formal Reprimand) account allegedly missing a call. The Neutral agreed with the Organization that the Carrier failed to meet to the burden of proof when they did not produce sufficient evidence proving their contention.

**Award No. 75:** Denied reinstatement of a Conductor who allegedly violated GCOR 1.6 Conduct, specifically harassment and misconduct, in an interaction with the manager of the lodging at the away from home terminal. The Neutral gave significant weight to the testimony of another employee of the hotel who witnessed the interaction and found some elements of the Claimant's statement led him to believe that an acknowledgment of misconduct occurred. He also noted that the complainant had offered to provide testimony during the hearing via telephone but that the Organization declined the offer. The Neutral found that the Carrier had established just cause to assess the discipline and it would not be disturbed.

**Award No. 76:** Sustained the claim of an Engineer for removal of censure (Standard Formal Reprimand) and pay for time lost account missed call. The Board found of particular note that when asked for a more expanded exhibit of VRU calls to show that the Claimant had, in fact, attempted to contact the Carrier upon observing she had missed crew office calls, the hearing officer responded that he was sure there was the ability to do that, but that he would go on record as a company officer and agree that the Claimant did call on the night in question. The Board found this response significant in that it established that the Claimant did attempt to contact the crew office and that at the time Carrier shows one of her phone numbers as "answering machine", her second number was marked as busy. The Board held this may well have been due to the Claimant attempting to call the crew office at the same time she was marked as having missed a call and, in the particular circumstances of the record, the claim would be sustained.

**Award No. 77:** Denied the reinstatement of a Student Engineer account allegedly failed to comply with instructions. As the instructions revolved around an alleged serious incident reported by the Claimant, the Neutral agreed that the Carrier was in need of a timely inquiry. In spite of the Claimant's belief he was on mandatory rest at the time, the Neutral found that the Claimant did not comply with Carrier Officer issued instructions.

**Award No. 78:** Denied the claim of an Engineer for removal of censure (Standard Formal Reprimand) and pay for all time lost account failure to maintain full-time employment. The Board found that the handwritten doctor's note that the Claimant presented did not set forth any specific days of examination or treatment. It also found that while the note stated what facility the Claimant's medical records were located, it was incumbent upon the Claimant to have obtained and presented those records in evidence for consideration. The Board held that in light of the above and the overall record, there was no basis to disturb the discipline assessed.

**Award No. 79:** Denied the claim for removal of censure (Standard Formal Reprimand) of an Engineer who allegedly failed to comply with the Carrier's Attendance Guidelines policy. The Neutral found that the Organization's position that a leave of absence improperly modified the Claimant's threshold was not supported.

**Award No. 80:** Sustained the claim for removal of censure (Standard Formal Reprimand) and pay for time lost account violation of Attendance Guidelines. This case involved a Claimant who was called to perform engine service as a requirement of his placement in the Locomotive Engineer Training Program and then was cut back to assigned service as a Conductor/Helper in yard service with assigned rest days. Because of the unusual set of circumstances that went unrefuted at the investigation, the Board agreed that the Carrier acted in a rigid and wooden manner in its assessment of discipline.

**Award No. 81:** Denied reinstatement of a Conductor who allegedly missed a call. The Neutral noted that the Claimant did not take exception to any of the Carrier Witness's testimony and had exhibited a pattern of repeated missed calls and attendance-related discipline; the instant case resulted from the Claimant's fifth violation in a twelve-month period (and the seventh in his fourteen-month career).

**Award No. 82:** Denied the claim for reinstatement of a Conductor who allegedly missed a call. The Neutral noted that the Claimant did not take exception to any of the Carrier Witness's testimony and had exhibited a pattern of repeated missed calls and attendance-related discipline; the instant case resulted from the Claimant's eighth violation in a twelve-month period.

**Award No. 83:** Dismissed the case as the Parties had settled it previously.

**Award No. 84:** Sustained in part the claim for reinstatement of a Conductor who allegedly failed to perform a proper air test and allegedly failed to provide factual information. The Neutral found that the Claimant was derelict of duty. However, the Neutral agreed with the Organization that the ultimate penalty of dismissal was overly harsh when considering the Claimant's exemplary work record prior to the incident.

**Award No. 85:** Denied reinstatement of a Switchman who allegedly was absent without authority following the expiration of an approved leave of absence. The Claimant was not present at the hearing. The Neutral found that the investigation was procedurally intact, that the Carrier had established just cause and that level of discipline was appropriate.

**Award No. 86:** Sustained in part the claim for reinstatement of a Switchman for alleged failure to properly protect an RCO shoving movement that resulted in a derailment. The Organization argued that the documented condition of the track likely played a significant role in the incident and that the Claimant was not negligent in his duties. The Neutral gave much weight to the Carrier Witness's testimony regarding how and why the derailment occurred; that is, it could have been prevented had the Claimant been in a more advantageous position. The Neutral found that although the incident should result in the application of discipline, dismissal was overly severe.

**Award No. 87:** Denied the claim for reinstatement of Switchman who allegedly failed to comply with instructions from the BNSF Medical Department. In spite of the Carrier's inability to provide facts to support its numerous letters accusing the Claimant of not following his EAP instructions, the Neutral disagreed with the Organization's contention that the Carrier failed to meet its burden of proof. Instead the Neutral ruled that the Claimant should have provided facts to refute the Carrier's contention. This is a highly disappointing award.

Fraternally,



J.M. LaPresta  
General Chairman  
SMART-TD GO-001

cc: General Chairmen, BNSF RY  
J. Previsich, President, SMART-TD