

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Spokane WA Conductor B. V. Bush for removal of Level S, Thirty (30) Day Record Suspension and One (1) Year Review Period and pay for all time lost as the result of the investigation held on March 21, 2012. (Organization File No. D2051; Carrier File No. 55-12-0074)

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.

The dispute at issue arises from an incident that came to the attention of the Carrier's Corporate Communications on March 8, 2012 concerning a March 1, 2012 BNSF train from Pasco, WA to Spokane/Hauser Yard, WA on which the Claimant was working as the train's Conductor along with Engineer Kyle Leahy. Corporate Communications notified the Carrier's Transportation Department that Engineer Leahy had possibly used an electronic device to access and send tweets while on a moving train in violation of applicable rules.

The Claimant and Engineer Leahy were thereafter notified to report for a joint hearing in a charge that reads in part here pertinent as follows:

[Your] alleged use of an electronic device while on a moving train to (1) listen to the radio and (2) access and send messages on Twitter at approximately 1247 hours on March 1, 2012 on the Spokane Subdivision, as well as your alleged failure to promptly report the violation to the proper supervisor.

Following the hearing, which was conducted on March 21, 2012, the Claimant was notified by the Carrier that it had determined testimony and exhibits to support a finding that he was guilty as charged. This Carrier letter identified the GCOR rules that it found to have been violated and informed him of its assessment of the discipline here on appeal.

Study of the record reveals that a radio on the Claimant's train was tuned to a station where the radio station deejays were engaged in direct communication with listeners and that Engineer Leahy had made two tweets to the deejays, one at 1247 hours and the second at 1318 hours. The tweets were recorded to have been as follows:

@possiblytully I'm running a train rite now, can you shout out to Kyle at BNSF, we're all listing in!!!

@EllisMate can we get a shout out, I'm and engineer at BNSF on a train rite now and listening,,,over

A download of the train's locomotive shows that just prior to the first tweet, the Claimant's train had passed over a public grade crossing at twenty (20) MPH. As concerns the second tweet, although the speed of the train was shown as zero, the Carrier submits the reverser was engaged in the forward position and the air brakes had been released, indicating that the train was about to begin its forward movement.

It is the position of the Carrier that based on the above findings it is evident that the Claimant, being in the cab of the engine at the time of the incident the subject of the charge, was fully aware of the improper radio communication that was taking place and of Engineer Leahy making tweets to the deejays at the radio station. Further, the Carrier submits that nothing of record shows the Claimant to have reported this incident to supervisory officials, much less to have had Engineer Leahy cease such a happenstance for his own and the safety of others.


The Board has given studied consideration to the varied arguments put forth by the Organization in defense of the Claimant. We are not persuaded by contentions that the Claimant was not listening to the radio, or that he was an unwilling participant in listening to the radio broadcast and Engineer Leahy's tweets. Nor does the Board find the fact nothing of record shows the Claimant to have engaged in the tweeting of the deejays to be a mitigating circumstance. The Claimant had a responsibility to have taken action to have stopped the use of any electronic device tuned to the radio station broadcast; instructed Engineer Leahy to immediately cease any tweeting; directed that undivided attention be given to the safety of their assignment; and, have reported the incident to a proper supervisor.

The Board finding that the Carrier has met a necessary burden of proof to conclude that the Claimant was guilty as charged, and discipline as assessed not being found to be harsh or unreasonable in the light of the seriousness of the offense, the claim to set discipline aside will be denied.

Award:

Claim denied.


Robert E. Peterson
Chair & Neutral Member


Melissa A. Beasley-Coke
Carrier Member


J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 1/9/17