

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Dilworth, MN employee B. P. Thompson for removal of Ten (10) Day Record Suspension and One (1) Year Review Period and pay for all time lost as the result of the investigation held on May 31, 2012. (Organization File No. D2053; Carrier File No. 55-12-0075)

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 Claimant was assessed the discipline here on appeal, a Ten (10) Day Record Suspension and One (1) Year Review Period, in a Carrier determination that testimony and evidence presented at a hearing conducted on May 31, 2012 shows that the Claimant failed to comply with instructions of supervisory officials while in the Locomotive Engineer Training Program (LETP) between May 7 and 13, 2012. Claimant was held to have violated GCOR 1.13, "Reporting and Complying with Instructions."

Aforementioned GCOR 1.13 reads:

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

At the hearing it was testimony of Road Foreman of Engines (RFE) Douglas that after the Claimant had failed the Net-Sim (train handling skills) portion of the final LETP examination in early April 2012 that he was in contact with the Claimant about additional training the Claimant need engage in before making a second examination attempt at promotion to an Engineer. Written instructions given the Claimant by another RFE at the direction of RFE Douglas reveal that the Claimant was informed that at a minimum he must make five Student Engineer starts each week, four in long pool freight service and one in local service. Although the number of weeks the Claimant was to do so was not set forth in the letter, it was said

that for a second attempt at qualifying for promotion generally ranges from 30 to 90 days. The Claimant acknowledged in testimony at the hearing that he had been given a copy of the letter of instructions as was placed into evidence at the hearing.

On May 15, 2012 RFE Douglas became aware that the Claimant had failed to comply with the aforementioned instructions during the workweek of May 7 to 13, 2012. The Claimant made only four starts, two of which were in yard service contrary to the Claimant having been instructed that he make five starts each week in road service.

The contention of the Claimant that the two yard switching jobs on which he had worked be recognized as local road service is not found to be supported by probative evidence of record. Moreover, it is significant that when RFE Douglas was recalled to testify relative to such matter that RFE Douglas said that in his phone conversation with the Claimant he had "stated no switch engines, just for the purpose to get the required skills to go down and pass the Net-Sim." The Claimant did not take exception to this testimony of RFE Douglas.

Claimant was employed by the Carrier as a Conductor on March 28, 2005. His discipline record at the time of the incident the subject of dispute in this case (May 7 - 13, 2012) is shown to contain just one formal reprimand in a failure to be available for call. At the same time, given the Claimant's overall length of service it would seem to the Board that the Claimant knew or should have known the importance and need to comply with the instructions of supervisors. It is noted that the Claimant did subsequently qualify for promotion to Engineer.

In the light of the above considerations and overall study of the record the Board finds no basis to disturb discipline as imposed by the Carrier.

Award:

Claim denied.



Robert E. Peterson
Chair & Neutral Member



Melissa A. Beasley-Coke
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 4/9/17