

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Tacoma, WA Engineer Lacy M. Rodriguez for removal of Standard Formal Reprimand and One (1) Year Review Period and pay for all time lost as the result of the investigation held on November 6, 2013. (Organization File No. D556-191-14A; Carrier File No. 50-14-0022)

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 calls for a determination as to whether or not the Claimant was guilty as charged of having missed a call for service at approximately 0220 hours on October 27, 2013 in violation of GCOR Rule 1.16, "Subject to Call."

Rule 1.16 reads as follows:

Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.

The record as presented at a formal investigation into the incident shows that the Carrier's automated voice phone call system (VRU) made a total of six attempts between 0202 and 0220 hours on October 27, 2013 to contact the Claimant at two different designated phone numbers to report for an assignment. In this respect, the Carrier submits that when the last of the stated phone calls went unanswered that the Claimant was then recorded as having missed a call for service.

It is the position of the Organization that the Claimant had complied with Rule 1.16 in urging that she was not absent from her calling place. The Organization submits, as the Claimant offered in testimony at the investigation, that she is a single mother and at the time of the calls for service she left her bedroom, where her telephones were located at the time, and had gone to her three-year old daughter's room, who was crying in an inconsolable and hysterically manner account not then feeling well

and experiencing “night terrors.” Further, it is offered that when the Claimant returned to her bedroom and saw that the crew office had called that she immediately placed a call to the crew office but was directed to the voice system and that it informed her that she was laid off from a missed call.


The Carrier disputes the contention that the Claimant had called the crew office on the date at issue in that no supporting evidence was presented at the investigation regarding this Claimant and Organization assertion. Further, the Carrier says if the Claimant had called in to the crew office, of which it maintains there is no evidence of a 0220 call, that the Claimant had: 1) already missed a call at that point in time; and, 2) if the Claimant had evidence of such a call to the crew desk it would have been a simple matter for the Claimant to have produced her phone records.

As concerns this latter Carrier argument, it is noted that at the investigation that the Claimant’s representative asked the hearing officer if he could get for the record a more expanded exhibit of the listed calls to show that the Claimant did call the VRU upon observing that crew office calls had been made to her phones. The response of the hearing officer was that he was sure there is the ability to do that, but he would go on the record as a company officer and agree that the Claimant did call at 0220 hours.

The Board finds this response of the hearing officer to be significant in that it establishes that the Claimant did attempt to contact the crew office as of 0220 hours. This is the same time that the Carrier exhibit shows one of the Claimant’s phone numbers as having contacted an “answering machine” at 0220 hours, with the second phone number of the Claimant being shown on the exhibit as “busy” as of this same 0220 hours. The busy phone line may well have been due to the Claimant at that same 0220 hours attempting to call the crew office; the same 0220 hours that the Claimant was marked as missing a call.

In the particular circumstances of record the claim will be sustained.


Claim Sustained.



Melissa A. Beasley-Coke
Carrier Member



Robert E. Peterson
Chair & Neutral Member



J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 4/18/17