

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Minot, ND Engineer T. P. Nelson 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 January 16, 2014. (Organization File No. D1059-259-14E; Carrier File No. 50-15-0038)

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.

This claim appeals and challenges a Carrier determination that testimony and exhibits presented into evidence at an investigation conducted on January 16, 2014 shows the Claimant to have failed to maintain full-time employment in accordance with the Carrier's Attendance Guidelines during a three-month period of August, September and October 2013. In this respect, the Carrier held the Claimant to have violated GCOR Rule 1.3.3, Instructions and Notices, and GCOR Rule 1.13, Reporting and Complying with instructions.

In support of discipline the Carrier submits that during the time frame at issue the Claimant worked in mixed service and that in keeping with this type of service that under the Attendance Guidelines he was expected to not lay-off more than 25% of weekdays and weekend days, as measured separately, including any rest days that were observed. The Claimant was shown, the Carrier offers, by evidence of record to have exceeded his threshold guideline for weekdays by a total of three days.

It is the position of the Organization that the Claimant did comply with the dictates of Rule 1.13 in that he did notify Trainmaster Linser why he had laid off and was then instructed by Trainmaster Linser to get a doctors excuse so that the lay-offs could be taken care of, but that after the Claimant did so that nothing was done with respect to him being charged with a violation of the Attendance Guidelines.

In study of the record, although the doctor's note which the Claimant presented states that "he has been seen by me numerous times since June to October 2013" for what is referenced as "persistent abdominal pain," and, further, that "he has had to


take time off for his medical appointments and various radiological tests," this hand-written note does not set forth any specific days of examination or treatment. While the note states that the Claimant's medical records are at "Trinity Health," it was incumbent upon the Claimant, not the Carrier, to have obtained and presented those records in evidence for such consideration as might be given to them.


In the light of the above considerations and overall study of the record the Board finds no basis to disturb the Carrier assessment of discipline in the form of a Standard Reprimand and One Year Review Period. The claim will therefore 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: 4/18/17