

**PUBLIC LAW BOARD NO. 7425**

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

**STATEMENT OF CLAIM:**

**Claim of Pacific Fifth Seniority District (Seattle, WA) Engineer D. A. Sconzo 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 March 19, 2014. (Organization File No. D324-262-14A; Carrier File No. 50-15-0028)**

**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 on appeal, a Standard Formal Reprimand and One Year Review Period in a Carrier determination that he was guilty as charged of a failure to maintain full-time employment in accordance with the Carrier's Attendance Guidelines for the three-month rolling period of December 2013, January 2014 and February 2014 while assigned as an Engineer in unassigned service at Seattle, Washington.**

**The Carrier submits that documentary evidence of record in the form of the Claimant's summary of attendance for the three-month period of time at issue shows that the Claimant was unavailable to work 5.5 weekend days, exceeding his weekend threshold under the Attendance Guidelines by two days.**

**It is the position of the Organization that as the Claimant testified at the company investigation, it was a medical leave of absence that he was granted for the period December 6, 2013 through January 3, 2014 that caused his availability in February 2014 to be skewed. In this respect, it is asserted that the Claimant had no way of calculating whether his time off in unassigned service would be in compliance with weekend layoffs. The Organization thus offers that the Claimant not being aware of how his weekend threshold was being calculated that the assessment of discipline is harsh and unreasonable.**

**In response to the foregoing Organization argument, the Carrier submits that the amount of time that the Claimant was on medical leave was not counted against him**

in the attendance system, but because the Claimant was not marked up for work during that medical leave time he did not earn additional time off under provisions of the Attendance Guideline. The Carrier here directs attention to General Notice 37 wherein it states: "All maximum layoff thresholds outlined above assume the employee remains marked up the entire period; additional time off (excluded time) will reduce your threshold."

As concerns Organization and Claimant argument that the latter had no way of determining during the three month period of time at issue as to whether he was in compliance with the Attendance Guidelines in view of being on a medical leave of absence, it is evident to the Board that the Carrier witness at the hearing, Trainmaster Woods, related several ways in which the Claimant could have determined such matter, if not have contacted a supervisory official if he had some concern. Further, it would seem that the Claimant knew or should have known how the Attendance Guidelines work in that since becoming an employee of the Carrier on October 24, 2005 he had twice been assessed Formal Reprimands for a violation of the Attendance Guidelines, once in 2010 and again in 2011.

The record supporting a finding that the Carrier has shown a necessary burden of proof for its assessment of the discipline at issue, the claim 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: 4/18/17