

**PUBLIC LAW BOARD NO. 7425**

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

**STATEMENT OF CLAIM:**

**Claim of Dilworth, MN Engineer J. H. 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 June 4, 2014. (Organization File No. D1137-266-14E; Carrier File No. 50-15-0040)**

**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.**

**It is undisputed that the record as presented at a June 4, 2014 investigation that was attended by the Claimant and his representative shows that the Claimant was found to have violated the Attendance Guidelines during the three-month rolling period ending April 30, 2014 in not being available for service on 1.5 weekend days of a guidelines threshold for an absence from work.**

**At the time of this three-month period of time the Claimant was in what the Carrier says is mixed service and had a subsequently calculated threshold of being unavailable for service of 6.5 week days, 1.5 weekend days, and 1 any day. The Claimant was shown to have been unavailable 4 of the 6.5 week days and 4 weekend days. Including the 1 any day allowable threshold day off, the Claimant exceeded the weekend threshold by 1.5 days.**

**The Organization contends that the circumstances that gave rise to the Claimant exceeding his weekend threshold was the consequence of the Claimant being called to perform engine service as a requirement of his placement in the Locomotive Engineer Training Program and then being cut back to assigned service as a Conductor/Helper in yard service with assigned rest days, and not being aware of the manner in which time off was being calculated for such mixed service. Thus, the Organization argues this is not the typical work time violation and that in imposing discipline the Carrier is acting in a rigid or wooden manner.**


As concerns the Claimant not knowing where he stood in application of the Attendance Guidelines while in this particular situation of mixed service the Board finds it noteworthy that when the hearing officer asked the Claimant if he had tried to contact a supervisor or company officer about a clarification of the Attendance Guidelines before being cited for the alleged violation that the response of the Claimant was that he had contacted a Paul Douglas and that the latter told him to talk with Terminal Manager Beam, who was in fact the then hearing officer in this case. In further questioning the Claimant said that he did not talk with Terminal Manager Beam because he was not in the office on that particular day. The Claimant did not, however, offer anything about any follow up attempt being made to talk with Terminal Manager Beam.


In view of what appears to be unusual set of circumstance of record that caused the Claimant to exceed his weekend threshold absence under the Attendance Guidelines that went unrefuted at the investigation, the Board finds merit in Organization argument that the Carrier acted in a rigid and wooden manner in its assessment of discipline. The claim will, therefore, be sustained.

Award:

Claim Sustained.

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: 4/18/17