

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Montana/Dakota Third Seniority District (Glendive, MT) Conductor C. Schiro, hereinafter referred to as Claimant, for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement for all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds of any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on October 30, 2012. (Organization File No. D-2107; Carrier File No. 50-13-0016)

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's dismissal from service arises from charges filed against him in a letter/notice of October 17, 2012 in connection with an alleged missed call for service at 1045 hours on October 16, 2012 and, as the Carrier submits, the Claimant's discipline record during a short term of employment.

At the investigation conducted into the charge the Carrier presented testimony and probative documentation to show that its Crew Support's auto-call system had commenced a series of calls to the Claimant's designated phone number at 1129 hours on October 16, 2012 and that the several calls continued until 1145 hours, at which time the Claimant was shown to have missed a call for service. Each of the several calls was shown to have been answered by voicemail or an answering machine. It is also most noteworthy that at the investigation the Claimant admitted that he had in fact failed to respond to the aforementioned calls.

The Claimant's discipline record at the time of the current offense shows that since commencing employment on January 1, 2011 the Claimant had been disciplined on six prior occasions. All but one of the discipline incidents involve attendance or call

related issues in a failure on the part of the Claimant to properly protect an assignment to service. The other discipline involved a failure to switch safely and efficiently, resulting in a derailment. As the Carrier submits, the current incident was the Claimant's 5th standard violation in 12 months and 7th in 14 months of service.

In study of the investigation as conducted the Board finds no merit in Organization contentions that the Claimant was denied benefit of a fair and impartial hearing. The conducting officer is shown to have provided both the Claimant and his representative full opportunity to defend against the charge of record. It is noted that when the Claimant was asked at the investigation if he took any exception to the testimony and exhibits as presented by the Carrier witness, the response of the Claimant was, "No." Asked if he had any statement to make that was pertinent to the investigation, the Claimant said: "As a Conductor for the BNSF Railway I try to do my job to the best of the ability given the tools necessary, line ups and so forth, that's it." Lastly, when asked if the investigation had been held in a fair and impartial manner under the rules of his Organization's scheduled agreement, the Claimant said, "Yes." The Claimant's representative likewise acknowledged that the investigation had been held in a fair and impartial manner.

The Board also rejects Organization argument that the penalty of dismissal from service was harsh and unreasonable. As stated above, the Claimant being a relatively short-term employee at the time of the current incident his past record reveals that despite being progressively disciplined that the Claimant has failed to accept responsibility for being available or reporting for duty on a regular basis.

The Board finding the record to support the Carrier imposition of the ultimate penalty of dismissal from service in this case, 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