

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Montana/Dakota (3rd) Seniority District (Glendive, MT) Conductor S. M. Dye for reinstatement to service with seniority rights unimpaired, removal of censure from her 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 on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on March 6, 2013. (Organization File No. D-2130; Carrier File No. 50-13-0033)

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 dismissed from service in a Carrier determination that testimony and exhibits brought forth at an investigation conducted on March 6, 2013 show that while the Claimant was assigned to the Guaranteed Extra Board at Glendive, MT she missed a call for service at approximately 0103 hours on February 8, 2013; the Carrier offering that the penalty of dismissal was in consideration of the Claimant's overall record in accordance with progressive discipline under its Policy for Employee Performance and Accountability (PEPA).

It is the position of the Organization that the Carrier failed to properly conduct an investigation in accordance with the Uniform Investigation Rule; the Claimant was prejudged guilty after the investigation had barely started; the Carrier failed in its obligation of burden of proof; and, discipline assessed in this case is harsh, excessive and unwarranted under the facts brought forth at the investigation.

The Board has carefully reviewed the transcript of hearing in the light of the above contentions of the Organization that the Claimant was denied due process under the applicable agreement rules. We find no basis to conclude that the investigation was

not fair and impartial. The record establishes that the Claimant had adequate notice of the charge against her; timely opportunity was provided to prepare a defense against the charge; the Claimant was ably assisted and represented at the investigation by a representative of the Organization; both the Claimant and her representative were given the opportunity to question testimony and exhibits of the Carrier witness; and, the Claimant and her representative were asked to present whatever pertinent information they desired to offer in defense of the charge of record. When the Claimant and her representative were separately asked if the investigation had been held in a fair and impartial manner under the rules of the scheduled agreement, each said, "Yes."

On the question of prejudgment, the Organization has based such contention solely upon the fact that in response to a question from the conducting officer the Carrier witness said that in missing the call for service the Claimant was in violation of GCOR Rule 1.16, Subject to Call. Clearly, the conducting officer has a right, if not an obligation to ask questions of witnesses relative to their testimony, and neither the question nor the response at issue constituted prejudgment; the witness having been summoned to offer testimony and exhibits in support of the charge.

As concerns Organization argument that the Carrier failed in its obligation of burden of proof, it is significant that undisputed documentary evidence presented at the investigation principally in the form of a layoff report. This report reveals the Carrier's auto-call system made six attempts from 0145 hours to 0203 hours, a period of 18 minutes, on February 8, 2013 to reach the Claimant for a train assignment, with the Claimant being shown to have missed a call for service as of this latter time, 0203 hours. Three of the calls were shown as have been acknowledged by an "Answering Machine;" the other three being listed as, "Answered No Response." When the Claimant was asked if she had any questions of the Carrier witness or took any exception to testimony of the witness, the Claimant said: "I don't."

The Claimant's representative questioned where documentation showed that the Claimant was on the Guaranteed Extra Board, first out, and available for call. Documents as presented were shown to indicate that the Claimant was so situated at the time the auto-call system made the calls for service at issue.

A further question by the Claimant's representative involved that of whether the Claimant had been given what was referred to as "a courtesy phone notification" under the North Line Seniority rules that the Claimant had been released from temporary assignment and therefore eligible to be called for work at any time thereafter. The Carrier witness directed attention to a Crew History Report that showed a computer generated phone call attempt to so notify the Claimant had been made at 2359 hours on February 7, 2013.

In regard to the quantum of discipline, the Claimant became an employee of the Carrier on January 17, 2011. The Claimant's record shows her to have been discipline free for her first year of service. However, between February 29, 2012 and February 7, 2013 the record shows the Claimant was disciplined for seven attendance related offenses prior to the incident the subject of this case. Above mentioned PEPA states: "A fifth Standard violation (or fifth violation of any kind, including violations of departmental attendance guidelines policies) committed in the 12 month review period may result in dismissal." As the Carrier submits, the current incident was the Claimant's eighth violation in 12 months.

Although not offered at the investigation, the Claimant has meantime presented a written statement in which it is asserted that having come to now realize the importance of being available for service, and with personal problem issues that she had been dealing with as a single mother with her daughter having been resolved, that given another chance to get her job back she would be faithful in fulfilling her job obligations.


There is no question that child care has become a challenge that faces thousands of single parents, as well as married couples. Nothing of record shows the Claimant to have in the past notified any Carrier supervisor officials about a need to be absent from work due to family problems so as to have been directed to benefit of employee assistance counselling or a leave of absence. Even if the Claimant's assertions about past family problems had been shown to be substantiated, which they have not, it would have to be considered that absent an unanticipated emergency situation, a lack of planning to handle family matters is not sufficient reason to excuse an employee from reporting for work.

There being ample witness testimony and documentary evidence that corroborates the fact that the Claimant missed the call for service at issue, and the Claimant's discipline record for a short term employee showing an extensive failure to be available for service on a full time basis over an extended period of time, the Board finds no basis to disturb discipline of dismissal from service as assessed by the Carrier to be harsh or unreasonable. The claim will, therefore, be denied.

Award: Claim Denied.


Melissa A. Beasley-Coke
Carrier Member


Robert E. Peterson
Chair & Neutral Member


J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 4/18/17