

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) Switchman J. K. Galiher, 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 of 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 November 22, 2013. (Organization File No. D845-041-14A; Carrier File No. 54-14-0012)

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 during an investigation that was held *in absentia* on November 22, 2013 support the conclusion that the Claimant was absent without authority since November 8, 2013 following the expiration of a medical leave of absence.

The record shows that the Claimant was duly notified by a November 13, 2013 letter that was delivered to his address of record of both the charge and the scheduled date of November 22, 2013 for the investigation. Copy of this letter is also shown to have been provided the Organization. However, for reasons apparently known only to the Claimant, he opted not to attend the investigation or seek representation.

It has long been recognized in numerous arbitration decisions that when a grievant chooses not to appear at an investigation that they do so at their own peril and are bound by the record as presented. The absence of the grievant does not, however, relieve the Carrier of proving the charge of record before it imposes a penalty.

According to the record, the Claimant requested and was granted a leave of absence on August 2, 2013 with an expiration date of August 12, 2013. This latter date was extended on request to September 15, 2013. The Claimant did not, however, report for duty following the expiration of his leave of absence, and nothing of record shows the Claimant to have requested any further extension of the leave of absence.


It was not until October 25, 2013, the Carrier says, that its supervisory officials became aware that the Claimant had not reported for duty following the expiration of his leave of absence on September 15, 2013. In this respect, the Carrier says that as a matter of courtesy it extended the Claimant's leave of absence from September 15, 2013 until November 8, 2013. A letter of October 25, 2013 to the Claimant notified him of this Carrier action. In part here pertinent this letter, delivered to the Claimant's address of record on October 28, 2013, states: "Failure to report for duty on or before the date of expiration of the leave will be subject to consequences as outlined in the collective bargaining agreement."

As mentioned above, when the Claimant failed to be in contact with the Carrier or to report for duty it issued the November 13, 2013 notice of investigation.

The Board finds no merit in Organization argument that the investigation was not conducted in accordance with the Uniform Investigation Rule. We also find no basis to conclude that the Claimant was denied due process in that he was tried in absentia. Nothing contained in this referenced rule precludes an investigation being held in absentia following notice of both the charge and the date scheduled for the investigation. Nor does the Board find reason to conclude that the Carrier failed in its burden of proof that the Claimant was guilty as charged. As stated above, the record is replete with documentation showing the Claimant to have failed to report for duty at the expiration of a leave of absence.

It being evident that the Claimant abandoned his employment responsibility in not returning to duty at the expiration of a leave of absence, the Board has no reason to hold that the Claimant's termination from service was harsh or unreasonable.

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