

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Lake Superior First Seniority District (Sioux City, IA) Conductor Sarah Fischer 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 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 September 3, 2015. (Organization File No. D418-365-15; Carrier File No. 54-15-0041D)

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.

Discipline here on appeal arises out of the undisputed fact of the Claimant having reported thirty (30) minutes late for her train assignment on October 20, 2014 that had an on duty time of 0030 hours. Upon reporting at the yard, and following a brief discussion with Trainmaster Hamilton, the Claimant was instructed to complete her train assignment with the train's Engineer who was already on duty.

By letter of the same date, October 20, 2014, the Carrier notified the Claimant that an investigation into her late reporting for duty was scheduled for October 30, 2014. The scheduled date of investigation was postponed twelve (12) different times, the Claimant having meantime requested and been granted a medical leave of absence.

A hearing into the above mentioned charge was held on September 3, 2015, albeit in absentia. This latter action according to the transcript of hearing having been taken after an attempt was made by a supervisory official to determine if the Claimant was inside or outside the building and after telephone calls had been made to the Claimant's three telephone numbers of record, all such efforts being to no avail.

Following the hearing, the Carrier notified the Claimant by letter dated September 17, 2015 that it had determined from testimony and exhibits brought forth at the investigation that she was guilty as charged and had violated GCOR 1.13, "Reporting and Complying with Instructions." In assessing discipline of dismissal from service the Carrier letter stated it was in consideration of both the seriousness of the instant violation and the Claimant's past record. The Claimant's record shows that at the time of the incident the subject of this dispute, October 20, 2014, the Claimant had been disciplined on six separate occasions for violations of attendance guidelines since becoming an employee of the Carrier on May 6, 2013.

At the hearing it was testimony of Trainmaster Hamilton that the Engineer for the Claimant's assignment approached him at about 0030 hours on October 20, 2014 about his Conductor (the Claimant) not being there to commence their assignment; he tried to contact the Claimant by telephone but received no response; he alerted crew support that it may be necessary to call another employee to fill the Claimant's assignment; and, a second attempt to reach the Claimant by telephone was successful, with the Claimant telling him that she was just arriving at the yard. It was further testimony of Trainmaster Hamilton that he had a brief discussion with the Claimant and told her to get her paperwork ready to complete her service; asked the Claimant why she was late; the Claimant apologized; and, the Claimant said she was late as a result of looking for her cell phone in order to continue her duty.

The Board finding that the Claimant is not entitled to a favorable award based on the facts of record and, as hereinbefore referenced, having an extensive discipline record for six prior attendance related violations in a short period of employment, 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: 9/25/17