

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Pacific Fifth Seniority District (Pasco, WA) Switchman J. A. Parks 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 May 14, 2015. (Organization File No. D977-218-15A; Carrier File No. 50-15-0081D)

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 asks that discipline of dismissal from service be expunged from his record and that he be paid for all time lost commencing with attendance at a company hearing that was held on May 14, 2015 in a charge of "alleged dishonesty and indifference to duty by allegedly entering and misrepresenting multiple Computer Based Training (CBT) layoffs on January 21, 2015, February 11, 2015, and March 29, 2015 with limited activity or no system access history to support the layoffs while assigned as a Switchman at Pasco, WA."

It is the position of the Carrier that, as Pasco Terminal Manager Fischer testified at the hearing, that pursuant to General Notice No. 83, dated December 19, 2014, an employee is only to layoff CBT on the scheduled due date for their required annual certification test and if an employee successfully completes their CBT web based training test prior to their scheduled due date without laying off they would then qualify for an incentive payment.

The Carrier says that upon investigating a similar matter of CBT layoffs it came to light that the Claimant had multiple CBT layoffs as mentioned above; records

showing that the Claimant accessed the CBT web based computer system for 36 minutes total time on January 21, 2015; no actual access time for February 11, 2015; and, 64 minutes total time on March 29, 2015. The Carrier thus says it is evident that the Claimant had one instance of laying off CBT and never accessing the system, with less than two hours accessing the system for the three different dates. It is noted as concerns the Claimant's CBT layoffs on the dates at issue that he did not file any claims of pay for any of the dates at issue.

It is the position of the Claimant and the Organization on his behalf that it is not a violation of any rules or general notices for employees to layoff multiple times using the CBT code to make themselves unavailable for the purpose of completing CBT certification. Further, it is offered that the Claimant completed his CBT testing on February 21, 2015, or prior to his due date, and that at no time did the Claimant file any type of monetary claim for completing the testing requirements in advance of his due date.

In review of the record, the Board finds it significant that in acknowledging at the hearing that he had laid off on the three occasions for computer based CBT training that the Claimant offered that it was his understanding since he "hired out" (July 19 2004) that he could lay off once a month for computer-based training. Upon being questioned as to whether he had any support for this once a month CBT layoff assertion, the Claimant said: "No." It is also noteworthy in this latter respect that neither the Claimant nor the Organization offered into evidence any support of it having been a practice for employees to be granted multiple CBT layoffs. We also find it significant that nothing of record was offered as to why, if the Claimant had completed his CBT training on February 21, 2015, he would thereafter make himself unavailable for service by laying off CBT on March 29, 2015.

In a closing statement at the hearing the Claimant said in part the following:

It is my belief that we could take the CBT days to work on our CBT and complete it before the due date. Uh, years past, we have done exactly that, uh, complete the CBT before the due date. . . . I believe this investigation is probably a little extreme. That's my opinion. I have learned a lot from it, and now that I understand the System General Notices a little bit better, I can become better for that. Uh, it's an awesome job. It's a wonderful job, working in a great field, and I think it needs to be noted too, that throughout these days off I never earned one dollar, dime or penny off of any of this. I lost money on this. My only intent was, just to do my CBT modules. That was it. That was my only intent, and now that we've gone over the System General Notices, and the enlightenment from Mr. Bailey, the Trainmaster, and Mr. Fischer, and reading them, now that it's been explained to me through this investigation that what is required of us

for the CBT, I think we can be sure, myself, that, uh, I've learned from it, and it won't happen again, and further improve myself with this.

From studied reading of the transcript of hearing the Board finds there was substantial evidence upon which the Carrier could reach the decision that the Claimant was guilty as charged. Although we concur with the Carrier that dishonesty is a major offense that generally calls for stringent discipline, including dismissal from service, we do not here find that it be the ultimate penalty of a termination of employment in the light of the particular circumstances of record, principally, that no pay was claimed for the multiple CBT layoffs. We believe more appropriate discipline to be a suspension in the amount of time served to the date of implementation of the Board's Findings and Award.

Accordingly, the Board will direct that discipline be modified as above stated, with the Claimant to be reinstated to service with seniority and other benefits unimpaired, without pay for all time lost. This return to service shall be subject to imposition of a twelve (12) month review period commencing with the date of the Claimant's return to service upon his successfully passing usual and customary return to service examinations.

Award:

Claim disposed of as set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Melissa A. Beasley-Coke
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 9/25/17