

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 Tyler Christensen 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 July 21, 2015. (Organization File No. D977-304-15A; Carrier File No. 50-15-0088D)

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.

This case involves the same Claimant as in Case No. 92 (Award No. 92) and arises out of the incident that was before the Board in that prior dispute, involving a discussion that the Claimant had with Terminal Superintendent Bailey in October 2014 about his suffering back pain that he attributed to required operation of an RCO (Remote Control Operation) transmitter box in the performance of work assignments.

As set forth in the Board's Findings in Award No. 92, the Claimant was removed from service following his contentions about the RCO pack box aggravating his back pain and he was instructed to provide needed medical documentation to the Carrier's Medical Department for fitness to duty evaluation; instructions that were not complied with by the Claimant.

In the instant case the Claimant was notified by letter of July 10, 2015 to report for an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, involving alleged failure to comply with instructions as set

forth in the Carrier's conditional reinstatement to service certified letter dated June 9, 2015.

Neither the Claimant nor his representative appeared for the scheduled July 14, 2015 investigation and it was therefore held in absentia. According to the transcript of hearing when it was determined that the Claimant was not present for the hearing that a brief recess was taken in a vain attempt to locate the Claimant.

Following the July 14, 2015 hearing the Claimant was notified by letter of August 4, 2015 that the Carrier had determined through testimony and exhibits brought forth during the investigation that his actions were in violation of GCOR 1.13, Reporting and Complying with Instructions, and GCOR 1.6, Conduct, and therefore dismissed from service effective that same date.

For the same rationale as the Board set forth in its Findings in Award No. 92, the instant claim will likewise 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