

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Pacific Seniority District (Spokane, WA) Conductor C. D. Carlsson 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. D426-315-15A; Carrier File No. 50-15-0095D)

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.

By means of USPS certified mailing under date of June 25, 2015 the Claimant was notified to report for a hearing on June 30, 2015 for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with an alleged failure to protect service when he reportedly missed a call for a train assignment with an on duty time of 1945 hours on June 23, 2015.

The scheduled date for the hearing was subsequently postponed and thereafter conducted on July 21, 2015, albeit in absentia. The hearing proceeded in the absence of the Claimant after it was determined that the Claimant was not in building and following testimony of a Carrier witness that in a telephone call he had made to the Claimant earlier that morning about the hearing that the Claimant reportedly told him to have the hearing proceed without him being present.

According to testimony of record and exhibits presented at the hearing the Claimant was assigned to a guaranteed extra board, first out, marked up, and showing that he was available for service, but failed to respond to three calls made to his telephone number of record between 1750 hours and 1805 hours PST on June 23, 2015 for Job G-CEGLVW9-22-H with an on duty time of 1945 hours in Hauser, Idaho. Another employee was called in place of the Claimant, with the Claimant being charged with a missed call for service.

In addition to the missed call for service violation in the instant case, the Carrier submits that the Claimant's dismissal from service is completely appropriate in view of his discipline record showing this to be the Claimant's fifth violation of rules within 12 months. The latter mentioned discipline being in addition to two other prior disciplinary entries on his record involving attendance related matters wherein the Claimant had failed to perform service as a full time employee during two separate three-month rolling periods of time.

Certainly, no employer, particularly a common carrier, can compete and operate efficiently and effectively if its employees cannot be depended upon to be available for and to report for work on a highly regular basis. Here, it is evident that the Claimant has not been as conscientious as should reasonably be expected of an employee regarding a work obligation in what appears to be a wrongful belief that he can unilaterally determine when he will be available for work. When an employee elects to do that, he or she does so at their own peril and cannot be heard either through their own testimony or Organization argument to complain when they are finally terminated from service.

The Board finding no basis to disturb the Carrier decision to terminate the Claimant from its employ, the claim to set discipline aside and return the Claimant to service will, therefore, 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