

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Mandan, North Dakota Conductor Adam J. Johnson 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 March 25, 2014. (Organization File No. D1344-190-14A; Carrier File No. 51-14-0207D)

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 discharged from service on April 7, 2014 in a Carrier determination that testimony and exhibits brought forth during a March 25, 2014 hearing show the Claimant to have exceeded his layoff threshold for the three-month period of December 2013, January 2014 and February 2014 in violation of its Attendance Guidelines, with the Claimant only being held accountable for February due to having previously been extended leniency for December and January with the opportunity of a fresh start with attendance commencing February 1, 2014.

The Carrier submits that under its Attendance Guidelines the Claimant, having been in mixed rest day service for the whole period of the time frame at issue, had a three-month layoff threshold of 3 "any days", yet, in February alone, was unavailable 5.5 weekdays and 3 weekend days, thereby exceeding his threshold by 5.5 days.

Notwithstanding the Claimant's violation of the Attendance Guidelines as charged, the Carrier submits that the Claimant only performed service on 6 days in the entire month of February. Of the 23.5 days of February that the Claimant was expected to be available (28 total days minus 4.5 days of excluded time), the Carrier shows that

the Claimant was on rest days for 3 days and on unpaid layoff for 8.5 more days, for a total of 11.5 days, leaving the Claimant's availability for February to be 51%, or well below the 75% availability the Carrier says it requests of its train and yard service employees.


There is no dispute concerning the dates of lay off. However, the Organization says the Carrier ignored the Claimant's absences having been due to the lingering effects of an on-duty injury suffered on August 11, 2013. In this respect, the Organization says that consideration should be given to the continued experience the Claimant has been experiencing with tension migraine headaches because of the injury; the severe effect of the headaches making it a safety hazard for the Claimant and his co-workers was the Claimant to perform service. Further, the Organization says the Claimant was following orders of his treating physician and absenting himself to seek medical treatment. The Organization thus asserts that the Carrier has issued discipline in a rigid and wooden manner contrary to decisions in Public Law Boards that the Carrier Attendance Guidelines be administered in a reasonable, common sense manner.


The Board finds the Organization arguments to be without merit in that the record shows the Claimant had been medically cleared for full-time service by both the Carrier's Medical Department and the Claimant's own physician. Further, as the Carrier submits, the Claimant, a three-year employee, signed waivers involving past violations of the Attendance Guidelines for which he was administered a Formal Reprimand, followed by 10 and 20 day record suspensions and, in addition, although the Claimant stood for a dismissal from service for his fourth attendance violation for the months of July, August and September 2013 he was granted leniency and given a second 20-day record suspension.

In the circumstances of record, the Board finds that the Carrier o have shown sufficient just cause for its discharge of the Claimant from service. 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: March 1, 2018