

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Lake Superior First Seniority District (Minneapolis, MN) Switchman Scott Bruce 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 August 19, 2014. (Organization File No. D1000-310-14A; Carrier File No. 50-17-0007D)

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 was before the Board in Case No. 100, in which prior dispute the Board upheld the Carrier discharge of the Claimant from service in its Award No. 100. Whereas the incident the subject of Case No 100 arose from actions of the Claimant on June 19, 2014, the incident the subject of the dispute here before the Board occurred on July 23, 2014.

In the present dispute the Claimant was discharged from service in a Carrier finding that a hearing conducted on August 19, 2014 shows that he acted without care for the safety of himself and others by smoking and failing to maintain safe operation of a company owned vehicle on July 23, 2014 in violation of GCOR 1.6, "Conduct."

There is no question that photographic evidence downloaded from a DriveCam video as presented at the hearing plainly shows the Claimant lighting and smoking a cigarette while driving a company owned vehicle on July 23, 2014 in direct violation of GCOR 1.6 and the Carrier vehicle policy and procedures manual which specifically states "smoking inside company vehicles is prohibited."


Although the Organization offers vigorous argument in defense of the Claimant in asserting that the Carrier failed to develop and substantiate its charges based on the evidence it presented, the Board finds the still-frame photos captured from the DriveCam video to clearly show the Claimant to be guilty as charged of smoking inside a company vehicle in violation of Carrier rules and policies and in disregard for the safety of himself and others.

As the Carrier submits a review of the Claimant's discipline record, which the Board more fully set forth in its Findings in resolution of Case No. 100, makes this current violation a third Level S rules violation within an outstanding 36-Month Review Period that attached to discipline as previously assessed for failure to wear a seat belt while operating a company vehicle. This, notwithstanding that the discipline policy states an employee may be dismissed for a second serious violation within a Review Period.

The Board finding no reason under the circumstances of record to hold that the Carrier lacked sufficient cause to dismiss 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