

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Seattle Washington Conductor Arthur D. Bryant 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 October 3, 2014. (Organization File No. D324-352-14E; Carrier File No. 50-17-0004D)

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 dismissed from service on October 15, 2014 in a Carrier determination that the record as developed at a hearing conducted on October 3, 2014 shows that in violation of instructions within the Carrier's Special Instructions and System General Notices and GCOR 1.13, Reporting and Complying with Instructions, the Claimant failed to maintain his Conductor certification as required by the Federal Railway Administration (FRA).

Study of the record reveals that the Claimant became an employee of the Carrier on April 14, 2008 as a Conductor Trainee in Interbay, WA, and after promotion to Conductor worked a variety of ground service positions in the Seattle, WA area.

As concerns the instant case, it is undisputed that the Claimant was required to pass Conductor recertification no later than September 16, 2014. The Claimant was successful in completing the hearing, vision and the rules requirement examinations. The Claimant offered that he had contacted four or more supervisory officials to no avail to complete a checked train ride requirement, and it was not until he was notified that he was being withheld from service by the Carrier's Technical Training Center (TTC) and Crew Office staff on September 17, 2014, that he

immediately drove to the Everett Terminal and only then learned that he did not need a train ride, but only needed to complete the motor vehicle requirements. The Claimant reportedly secured and completed the proper paperwork for his motor vehicle requirements. Two days later, on September 19, 2014, after turning in his motor vehicle records the Claimant was returned to service by the TTC and the Crew Office for duty.

The Carrier had meantime issued under date of September 17, 2014 a notice of hearing to the Claimant that scheduled a hearing for September 25, 2014 in a charge of alleged failure to comply with instructions to maintain his Conductor Certification as required by the FRA. The scheduled hearing date was twice postponed and the hearing was thereafter held on October 3, 2014. Following the hearing, by letter of October 15, 2014, the Carrier notified the Claimant that it had determined from testimony and exhibits brought forth during the hearing that he was in violation of GCOR 1.13 and dismissed from service effective that same day, October 15, 2014.

Although the Organization recognizes that the Claimant failed to maintain his Conductor certification, it contends that the failure to do so was based upon confusion, something which it says could have been rectified by a number of Carrier officers. The Organization says that it cannot be understated that the Claimant made four or more attempts to comply with instructions involving a checked train ride and that involved supervisory officials should have timely communicated to the Claimant that he did not need a train ride, but needed only to complete his motor vehicle forms. In this respect, the Organization says that as shown in an exhibit presented into record that the Carrier is the keeper of comprehensive records in these matters and therefore shares equal responsibility in the Claimant's failure to maintain his certification. This, contrary to the Claimant having stated in a closing statement at the hearing that he recognized it was his responsibility to maintain his certification and to get his paper work done on time.

The Organization maintains that the circumstances of record should serve to mitigate discipline and that the record clearly does not justify the Carrier's actions in dismissing the Claimant from service.

In the particular circumstances of record and in view of the Claimant's service record showing several disciplinary entries over the Claimant's four years of service, it must be held that the Carrier has shown sufficient reason for the Claimant to be assessed severe discipline. However, the Board does not believe discipline extent to that of a permanent discharge from service. We find more appropriate discipline to be a Level S Suspension from service with a One Year Review Period, without pay for all time lost. The Board will therefore direct that discipline be modified as herein stated and that the Claimant be returned to service

with seniority and benefits unimpaired and subject to his successfully passing all required 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: March 1, 2018