

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Chaffee, MO Conductor Tyler Kilburn 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. D947-354-0011D; Carrier File No. 55-17-0011D

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.

On August 8, 2014 the Carrier issued a notice of hearing to the Claimant for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with an alleged failure to perform service as a full-time employee in violation of the Attendance Guidelines, specifically being over the threshold for unassigned service during the three-month rolling period of May, June and July 2014 by six weekdays and four weekend days.

The date of hearing was several times postponed and not held until October 3, 2014. Following the hearing, by letter of October 13, 2014, the Carrier notified the Claimant that it had determined through testimony and exhibits brought forth during the hearing that he was guilty as charged and thereby dismissed from service effective that same date, October 13, 2014. The Carrier letter stated that in assessing discipline consideration was given to the Claimant's discipline record; the current offense being the Claimant's fourth active violation of the Attendance Guidelines in less than 12 months, with the Claimant having a little over two years of service.

Before proceeding to the merits of the dispute the Board will note that it does not find the Claimant to have been denied benefit of a fair and impartial hearing, as the

Organization argues. The procedural irregularities that it offers are not of sufficient basis to declare a mistrial.

According to the statistical record presented at the hearing, the Claimant had a three-month weekday layoff threshold allocation of 14.5 days; absented himself from service via unpaid layoff on 20.5 weekdays, leaving him six days over his weekday layoff threshold. Additionally, the Claimant had a weekend day layoff threshold of six days and absented himself from service via unpaid layoff on 10 weekend days, leaving him four days over his weekend day layoff threshold.


It is the position of the Organization that consideration should be given to what is offered as extenuating circumstances related to the Claimant's layoffs, namely, extreme depression and anxiety suffered since childhood and the Claimant's efforts to balance his work life with his medical issues. In this respect, attention is directed to the Claimant having to emotionally deal with depression following his father having been murdered 10 years ago and the Claimant having suffered an on-duty injury in August of 2013, traumatic events that it is offered have led to the Claimant experiencing tension migraine headaches. Moreover, the Organization offers that the Claimant has been seeking counseling for these issues in keeping with the recommendations of a Carrier Employee Assistance counselor.


In response to the above contentions of the Organization, the Carrier says that while it does empathize with the Claimant's situation, the fact remains that the Claimant had not brought any of the issues cited to supervisors; the Claimant signed waivers of discipline for his past three offenses without speaking to any Carrier officer about any problems; and, the Claimant did not contact the Carrier's Employee Assistance Program counselor until August 18, 2014, ten days after the notice of hearing into the current incident was issued.

It being evident as the Carrier offers that the Claimant has clearly established a pattern of behavior demonstrating he simply does not intend to abide by Carrier rules and policies concerning work attendance, the Board will not disturb discipline as imposed by the Carrier. The claim for a reinstatement to service will be denied.

Award: Claim Denied.


Melissa A. Beasley-Coke
Carrier Member


Robert E. Peterson
Chair & Neutral Member


J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: March 1, 2018