

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Dilworth, Minnesota Engineer Cody Stein 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 September 9, 2014. (Organization File No. D1137-372-14E; Carrier File No. 50-17-0005D)

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.

An employee hired by the Carrier on May 5, 2004, the Claimant was granted a medical leave of absence on August 22, 2013, a leave that expired March 10, 2013. The Claimant failed to report for service or provide any medical documentation in support of any continued absence. Accordingly, under date of May 13, 2013 the Carrier sent the Claimant a certified letter in which it advised him that since he had not requested a further leave of absence and had failed to substantiate his continued absence from work that he would be considered absent without authority. This letter went unanswered by the Claimant.

In what the Carrier states was a one-time courtesy, it notified the Claimant by letter of August 22, 2013 that he was being provided 10 days from the date of the letter to either 1) request leave extension, or 2) return to work, and that a failure to do so may subject him to discipline. This letter, sent certified mail, return receipt requested, was returned to the Carrier as unclaimed on September 12, 2013, the U.S. Postal Service track and confirm report as presented into evidence showing that it exhausted its several attempts at delivery and acceptance by the addressee.

Thereafter, by letter of November 20, 2013 the Carrier notified the Claimant to report for a hearing on November 25, 2013 for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with alleged negligent conduct in a failure to comply with instructions to provide medical documentation for his expired medical leave of absence and his continued and ongoing failure to protect his employment.

The hearing was postponed on four separate occasions and thereafter held on September 9, 2014. When it was determined that the Claimant was not present for the hearing, the conducting officer provided a brief recess to check as to whether the Claimant was in the building, and not finding him, the hearing proceeded in absentia. A local representative for the Organization was present and provided opportunity to offer a defense against the charge of record; to question the Carrier's witness; and, to present witnesses and documentation in support of the Claimant's absence from work. In a closing statement the representative for the Claimant said:

The last time I was in contact with Mr. Stein was approximately April or May of 2014; instructed him to contact Trainmaster Greg Vetter and I also gave him the phone number and contact of EAP which Cody told me that he did and he was in contact with Mr. Vetter and that is the last I have heard from Mr. Stein to date.

Subsequently, by letter of October 8, 2014 the Carrier notified the Claimant that he was dismissed from service effective that same date for a violation of GCOR 1.13, Reporting and Complying with Instructions, GCOR 1.15, Duty-Reporting of Absence, and GCOR 1.16, Subject to Call.

At the Board's hearing on this dispute the Organization presented for consideration a letter from the mother of Mr. Stein that is dated November 14, 2017. In part this letter reads:

As guardian and advocate for my son Cody D. Stein, it is important to inform you that he currently resides at Nuway Treatment Center in Minneapolis, Minnesota. Cody is permanently disabled due to PTSD, Anxiety Disorder, and Depression. While our family understands that this is not a part of the record before you, we ask mindfulness of his personal history while weighing the arbitral record before you.

The letter went on to describe issues that have devastated the Claimant's life and the affect such matters have been a cause for his mental health, behavior, and demeanor to have declined over the years. The letter also said that the Claimant had been in and out of numerous treatment centers over the past six years.


The Board can appreciate the concern expressed for the welfare of the Claimant and the desire to have the Claimant continue an employment relationship in reportedly coming from a long line of railroaders. At the same time, the Board must consider that the Carrier has gone to great lengths in demonstrating that it did not treat lightly the Claimant's personal issues. The Carrier was exceedingly considerate in extending leniency to the Claimant with respect to the extent of his absences from work and a failure on the part of the Claimant to respond to correspondence of record. We cannot ask the Carrier to do more than it has already done. As stated in Award No. 117 of PLB No. 1790, Arbitrator David Dolnick:

Every employer has the right to expect every employe to report for work and work all of the scheduled hours on every regularly scheduled work day. Over the years an employe may occasionally be absent because of illness or an employe may have a long consecutive absence because of sickness or accident. And an employe may have an occasional good reason to be absent, or tardy or in need to leave early for numerous good reasons. But absences, tardiness and early leaves, for whatever the reasons, including illness, may be excessive, and, if continued over a length of time, may be excessive subject to discipline.

In the circumstances of the record, the Board finds the Carrier to have shown sufficient just cause for its decision to terminate the Claimant from service. The claim 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: March 1, 2018