

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Forsyth, Montana Conductor Sydney G. Booker 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 July 30, 2014. (Organization File No. D486-292-14D; Carrier File No. 50-15-0023D)**

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 Monday, July 21, 2014 the Claimant was on the Conductor's Guaranteed Extra Board at Forsyth, Montana and subject to call when the Crew Support Automated Outbound Calling system attempted to reach him on his telephone number of record on three separate occasions from 1:30 p.m. to 1:49 p.m. for a call to service for a train with an on duty time of 3:00 p.m. that same day, July 21, 2014, at Forsyth. The calls having gone unanswered, the Claimant was shown as missing a call for service in keeping with established practice.**

**The Claimant was thereafter notified by letter of July 23, 2014 to report for an investigation to determine the facts and responsibility, if any, for alleged failure to be available for service on the date at issue, July 21, 2014.**

**The investigation was scheduled for and held on July 30, 2014 with the Claimant in attendance and assisted in a defense against the charge by a representative of the Organization. The Claimant accepted responsibility at the investigation for missing the July 21, 2014 call of record.**

Following the investigation the Claimant was notified by letter of August 14, 2014 that the Carrier had determined from testimony and exhibits brought forth at the hearing that he was guilty of a violation of GCOR 1.16, Subject to Call, and GCOR 1.15, Duty-Reporting or Absence. The letter further stated that the Claimant was dismissed from service effective that same date, August 14, 2014, in consideration of the current offense when viewed in the light of his disciplinary record.

GCOR 1.6, Subject to Call, states:

Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.

GCOR 1.15, Duty-Reporting or Absence, states:

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

The Carrier discipline is appealed in assertions that the Claimant was experiencing extenuating personal circumstances that required him to return to his primary doctor in Houston in connection with "a flare up" of a medical issue that he has had for some 30 years. It is offered that the Claimant intended to lay off sick to make the trip to Houston, but "his mental aspect at the time just kind of went out the window" and he forgot to layoff before departing for Houston. Further, it was offered that the Claimant intended to talk with Carrier supervisory officials about his condition as soon as he returned to Forsyth.

In testimony at the investigation the Claimant said the following when asked if he had any evidence that he wished to present:

Uh, yes, uh, I'm, I missed a call. I was, uh, I had an extreme medical condition. I flew back to Houston because my doctor wouldn't release me and I was to show that I was actually boarded a flight and I just, um, I was sedated, and I forgot to call and layoff. But this here shows right here that I was boarding a flight from Houston to Denver at that time and I had already turned my phone off.

In subsequent testimony, when asked if this was a known appointment that he was going to, the response of the Claimant was as follows:

Uh, it was, it was a couple of days prior. I'd been feeling real bad the last couple of days leading up to it and it got to the point that I was passing a lot of blood in my stool. Uh, I attempted to go the doctor here in Montana but because my doctor hadn't released me yet other than just saying an emergency I need to have certain tests ran so I had to go to my doctor and I had, uh, the utilization of being able to fly home. So I laid off sick and I went home and once I went home I had to have some more extensive tests ran. I made it home on Friday, they ran some tests and then they set it up for that Monday. They wanted to go into do a colonoscopy.

Questioned for clarification as to where his home was and where the doctor was located with whom he had an appointment, the Claimant said the doctor was in Humble, Texas, and then went on to state the following:

That's my, that is my primary care physician that I have been dealing with because of the nature of my illness and, uh, what was going on, I just felt a little more comfortable dealing with them so I can know what was going on because the system there, what was going on in my stomach, my colon was something I dealt with almost all my life. It first occurred when I was in the third grade. It's something that I have to, you know, pretty much keep abreast and it came back the first time in almost thirty years and it scared the crap out of me.

In response to the above defense of the Claimant, the Carrier posits that while the Claimant said he was having an "extreme medical condition," that he did not then go to an emergency room but instead boarded a plane for Houston, placing himself in a position to miss a call in a failure to contact any supervisor prior to leaving Forsyth. The Carrier also submits that the Claimant did not contact any supervisor immediately after learning he had missed a call for service.

At the investigation the Claimant presented copy of an airline ticket issued to him on July 21, 2014 for a flight that is shown as departing that day from Houston to Denver at 2:25 p.m. The Claimant said that he had turned his phone off prior to boarding; the flight receipt showing boarding was to start at 2:10 p.m.

The Claimant also presented into evidence a Return to Work Certificate from a doctor with an office at Humble, Texas who the Claimant said was his primary care physician that he has been dealing with because of the nature of his illness. This certificate, dated July 21, 2014, states that the Claimant has been under the doctor's care "from July 21, 2014" and that the Claimant is able to return to work July 22, 2014 for full duty with no restrictions. The certificate does not mention any past treatment of the Claimant for a stated medical condition. The certificate also makes

no mention of the Claimant having been to the doctor on Friday, July 18, 2014 for tests, as is offered by the Claimant.


In view of the manner in which the doctor's certificate issued, it is difficult to comprehend the Claimant offering that he had to fly home to Houston to see his primary physician for treatment of a medical issue that he says, on the one hand, is something that he has had to deal with almost all his life for some 30 years, while, on the other hand, stating it first occurred when he was in the third grade and that this was the first time in almost 30 years that it came back.


Turning to the question of discipline, the Carrier says that it took not only the current violation into consideration, but the Claimant's past disciplinary history which shows that in slightly over one year of service the Claimant accumulated five marks of discipline, all associated with failures on the part of the Claimant to properly protect assignments. In this respect, the Carrier submits that its Policy for Employee Performance Accountability states in pertinent part: "A fifth Standard violation (or fifth violation of any kind, including violations of departmental attendance guidelines policies) committed in the 12 month review period may result in dismissal."

The Board finding the Carrier to have shown sufficient cause for its dismissal of the Claimant from service, the claim will be denied.

Award:

Claim Denied.

  
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Robert E. Peterson  
Chair & Neutral Member

  
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Melissa A. Beasley-Coke  
Carrier Member

  
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J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: March 1, 2018