

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Forsyth, Montana Conductor Sterling H. Silver 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 February 25, 2014. (Organization File No. D486-153-14D; Carrier File No. 50-15-0022D)

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 following a February 25, 2014 disciplinary hearing at which the Claimant was present and duly assisted in defense of a Carrier January 29, 2014 charge of record that reads as follows:

Indifference to duty and and/or failure to protect your employment beginning December 14, 2013 and continuing forward, as you have not worked since December 9, 2013. In addition, your failure to comply with instructions from Trainmaster Keri Bethurem on December 6, 2013 and December 9, 2013 when she instructed you to find your own lodging in Sheridan, WY or exercise your seniority to another pool not requiring lodging in Sheridan, WY.

The Organization has advanced various procedural objections in urging, among other things, that the Carrier failed to conduct a fair and impartial hearing; the notice of hearing was outside rule time limits; the Carrier failed in its obligation of meeting a burden of proof; and, even if assuming, *arguendo*, the Claimant had some responsibility for the incident the subject of charge, which it maintains he did not,

that discipline assessed under the facts brought forth at the hearing is excessive and unwarranted.

The Board has carefully reviewed the Organization's several arguments and finds them to be without merit or not of sufficient substance to sustain the claim.

The basic facts that give rise to this case are that when the Claimant last stayed on December 5, 2013 at the Holiday Inn in Sheridan, WY, the Carrier's designated away-from-home terminal lodging facility at Sheridan, he engaged in quarrelsome, discourteous and hostile conduct towards the hotel staff that resulted in the Holiday Inn management advising the Carrier that the Claimant would no longer be welcomed to stay at their facility. The Claimant's involvement in this incident was the subject of Case No. 75 before this Board. Assessment of a 30-Day Record Suspension and One Year Review Period for the Claimant's involvement in the December 5, 2013 incident that led to his being banned from this away-from-home terminal lodging facility was upheld by the Board in its Award No. 75.

On December 6, 2013 the Carrier's Division Trainmaster at Forsyth, MT, Ms. Keri Bethurem, informed the Claimant of the hotel's restriction and instructed him that he need exercise his seniority to a pool/job that did not require lodging at Sheridan or if he choose to continue to work in the Forsyth-Sheridan pool he would need to provide for his own lodging and pay for it himself while at Sheridan. These instructions were repeated to the Claimant on December 9, 2013.

The Claimant did not to comply with the above mentioned instructions and options. Instead, the Claimant proceeded to layoff on call from assignments to which he was eligible to cover through an exercise of seniority in the Forsyth-Sheridan pool service. The Claimant also failed to exercise seniority between December 7, 2013 and February 25, 2014 to another pool service that operated out of Forsyth to other than Sheridan or to a ground service position at Forsyth. The Claimant was shown to have laid off on call on 11 instances, waiting at times to do so until he was called for service. In addition, the Claimant marked off for sickness, personal leave, and vacation days. On several occasions the Claimant was reported to have said that he was laying off on call due to the Carrier not providing or paying for transportation to a lodging facility or not being willing to pay for rest at an alternate lodging facility.

When the Claimant's conduct and refusal to comply with the instructions of Division Trainmaster Bethurem was brought to the attention of the Superintendent of Operations it was decided to issue a notice of investigation to determine the facts and responsibility, if any, for the Claimant's alleged indifference to duty as such charge is more fully referenced in the above cited charge of record.

There is no question agreement rules stipulate "suitable lodging is to be designated" at each location where interdivisional service is established for Conductors and Brakemen tied up or released at other than the home terminal. It is also undisputed that the Carrier has designated the Holiday Inn at Sheridan as the centralized lodging facility for crews in Forsyth-Sheridan interdivisional service. The Claimant has been banned from staying over at the designated contract lodging facility in Sheridan by management of the hotel itself solely as a result of the Claimant's personal behavior, not through any action of the Carrier.

In the particular circumstances, it does not seem unreasonable that the Carrier would issue instructions to the Claimant to exercise his seniority to assignments that did not call for him to lay-over at Sheridan or, alternatively, to pay for his own transportation and lodging if he opted to remain working in the Forsyth-Sheridan pool. As the Carrier submitted at the hearing, and the Claimant readily admitted, he has voluntarily exercised seniority in the past to work on numerous assignments within his seniority district other than the Forsyth-Sheridan pool service. The hearing record also shows there are four boards or pools at Forsyth on which the Claimant could exercise seniority that do not require a lay-over at Sheridan and that would not financially disadvantage the Claimant.

If the Claimant had good and sufficient reason to challenge the instructions of Division Trainmaster Bethurem then, as held in numerous decisions by Boards such as this, it was incumbent upon the Claimant to have followed a time recognized principle of complying with the instructions and seeking recourse, if any, in the filing of a grievance because an obedience to instructions, other than related to the safety of an employee, is most essential to the safe and efficient operation of a rail carrier. The Claimant having taken it upon himself not to follow admittedly recognized instructions of a supervisory official and in absenting himself from duty without permission; it must be held that the Claimant engaged in, as charged by the Carrier, an indifference to duty and/or failure to protect employment, or what is tantamount to insubordinate behavior.

As set forth in Award No. 69 of PLB No. 5107, UTU v. NW, Arbitrator William F. Euker:


The charge of insubordination, if proven, is a dismissible offense. Refusal to obey instructions to report for service constitutes insubordination and in the absence of a rational and valid excuse, it would justify the most extreme penalty of dismissal.


The Carrier having shown in this particular case that the Claimant was guilty of a violation of GCOR 1.6, Conduct, GCOR 1.13, Reporting and Complying with Instructions, and GCOR 1.15, Reporting or Absence, in violation of acknowledged

instructions about a need to cover assignments available to him in an exercise of seniority, 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